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Commission Conference Agenda
March 1, 2016

Item 1

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 18, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Office of Telecommunications (Williams)
Office of the General Counsel (Lherisson)

RE: Application for Certificate of Authority to Provide Telecommunications Service

AGENDA: 3/1/2016 - Consent Agenda - Proposed Agency Action - Interested Persons May Participate

SPECIAL INSTRUCTIONS: None

Please place the following Application for Certificate of Authority to Provide Telecommunications Service on the consent agenda for approval.

DOCKET NO.	COMPANY NAME	CERT. NO.
150244-TX	Pure Telephone Corp	8882

The Commission is vested with jurisdiction in this matter pursuant to Section 364.335, Florida Statutes. The Certificate of Authority authorizes Pure Telephone Corp to provide Telecommunications Services in the State of Florida as a Telecommunications Company as defined by Section 364.02(13), Florida Statutes. Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee if the certificate is active during any portion of the calendar year. A Regulatory Assessment Fee Return Notice will be mailed each December to the entity listed above for payment by January 30.

Item 2

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 18, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Page) PHP
Division of Economics (Higgins, McNulty, Ollila, Rome, Wu) SSH S.O.

RE: Docket No. 150200-PU – Proposed amendments to Rule 25-6.0436, F.A.C., Depreciation, Rule 25-6.04364, F.A.C., Electric Utilities Dismantlement Studies, Rule 25-7.045, F.A.C., Depreciation, and Rule 25-7.046, F.A.C., Subcategories of Gas Plant for Depreciation.

AGENDA: 03/01/16 – Regular Agenda –Rule Proposal - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brisé

RULE STATUS: Proposal May Be Deferred

SPECIAL INSTRUCTIONS: None

Case Background

Rules 25-6.0436, Depreciation, and 25-6.04364, Electric Utilities Dismantlement Studies, Florida Administrative Code (F.A.C.), set forth accounting principles for the calculation of depreciation by electric utilities. Rules 25-7.045, F.A.C., Depreciation, and 25-7.046, F.A.C., Subcategories of Gas Plant for Depreciation, establish the accounting principles for the calculation of depreciation by gas utilities. The rules implement Section 366.06(1), Florida Statutes, (F.S.), which states that the Commission shall have authority to investigate and determine the actual legitimate costs of the property of each utility less depreciation.

The Commission's Notice of Development of Rulemaking was published in the Florida Administrative Register (F.A.R.), on April 30, 2015, in Volume 41, Number 84. On May 22,

2015, May 29, 2015, and July 7, 2015, respectively, comments were received from Tampa Electric Company (TECO), Peoples Gas, Florida Public Utilities Company, and Florida Power & Light Company (FPL). No rulemaking workshop was requested and no workshop was held.

This recommendation addresses whether the Commission should propose the amendment of electric and gas utility depreciation Rules 25-6.0436, 25-6.04364, 25-7.045, and 25-7.046, F.A.C. The Commission has jurisdiction pursuant to Sections 120.54 and 366.06(1), F.S.

Discussion of Issues

Issue 1: Should the Commission propose the amendment of Rules 25-6.0436, 25-6.04364, 25-7.045, and 25-7.046, F.A.C.?

Recommendation: Yes. The Commission should propose the amendment of Rules 25-6.0436, 25-6.04364, 25-7.045, and 25-7.046, F.A.C., as set forth in Attachment A. (Page, Ollila, Higgins, McNulty, Rome, Wu)

Staff Analysis:

This rulemaking was initiated to update, clarify, and streamline Commission depreciation rules for investor-owned electric utilities and gas utilities, and to provide more consistency between the electric depreciation and gas depreciation rules. Staff is recommending that the Commission propose the amendment of the rules, as set forth in Attachment A. Below is a more detailed explanation of the rule amendments staff is recommending.

Electric Utilities

Rule 25-6.0436, F.A.C., Depreciation

Rule 25-6.0436, F.A.C., provides definitions of depreciation terms and describes the requirements for categories of depreciable plant, depreciation rate, and accounts and subaccounts. Subsection 25-6.0436(1), F.A.C., defines the terms used in calculating the remaining life and whole life depreciation rates for electric utilities. Staff recommends the amendment of subsection 25-6.0436(1), F.A.C., to clarify these terms.

Staff also recommends amendments to subsection 25-6.0436(4)(a), F.A.C., which requires each electric utility to file a depreciation study for Commission review at least once every four years from the submission date of the previous study. TECO, Peoples Gas, and FPL suggested that "unless otherwise required by the Commission," be added to make clear that the Commission has the authority to require a depreciation study at a time set by the Commission. Staff agrees and recommends that "or pursuant to Commission order and within the time specified in the order" be added to subsection 25-6.0436(4)(a), F.A.C.

Subsection 25-6.0436(4)(a), F.A.C., states that electric utilities shall submit six copies of the information required for a depreciation study and at least three copies of the numerical data required when filing a depreciation study. Staff recommends amendments removing the requirement to file numerous copies of the information required in a depreciation study. Staff recommends that subsection 25-6.0436(4)(a), F.A.C., be amended to specify that depreciation studies shall be filed in electronic format. The electronic filing requirement is consistent with the Commission's requirement for electronic filings. Staff also recommends amendments stating that annual depreciation status reports shall be provided in electronic format for subsection 25-6.0436(9), F.A.C. The electronic filing requirement updates subsection 25-6.0436(9), F.A.C., and reflects the current Commission practice to require electronic filings.

Staff recommends amendments to 25-6.0436(5)(a), F.A.C., specifying that components of a depreciation study shall include average service life, age, curve shape, net salvage, and average remaining life. Staff recommends amendments to subsection 25-6.0436(5)(b), F.A.C., stating

that a depreciation study shall also include a comparison of current and annual depreciation rates and expenses.

Subsection 25-6.0436(3)(a), F.A.C., references subsection 25-6.014(1), F.A.C., but does not directly refer to the Uniform System of Accounts (USOA). Staff recommends a specific reference to the USOA in the subsection stating that the USOA is incorporated by reference in subsection 25-6.014(1), F.A.C.

Rule 25-6.04364, F.A.C., Electric Utilities Dismantlement Studies

Rule 25-6.04364, F.A.C., states that each utility owning a fossil fuel generating unit is required to establish a dismantlement accrual as approved by the Commission to accumulate a reserve that is sufficient to meet all expenses at the time of dismantlement. Staff recommends the deletion of the phrase "fossil fuel" so that Rule 25-6.04364(1), F.A.C., may encompass other forms of electric generation such as certain renewable generating facilities. Language was also added to the rule to indicate that Rule 25-6.04364, F.A.C., is not applicable to nuclear generating plants which are addressed in Rule 25-6.04365, F.A.C.

Subsection 25-6.04364(3), F.A.C., states that each electric utility shall file a dismantlement study for each generating site once every four years from the submission date of the previous study. Staff recommends that "or pursuant to Commission order and within the time specified in the order," be added to the rule. This amendment makes clear that the Commission has the authority to require a depreciation study at a time set by the Commission. This amendment also makes the language in section 25-6.04364(3), F.A.C., similar to that recommended for Rule 25-6.0436(4)(a), F.A.C.

Gas Utilities

Rule 25-7.045, Depreciation

Section 25-7.045(1), F.A.C., does not contain a definition of the term, "Net Book Value," and staff recommends defining this term in subsection 25-7.045(1)(d), F.A.C. Rule 25-7.045(1), F.A.C., does not contain a definition of "Reserve," and staff recommends the inclusion of this definition in subsection 25-7.045(1)(f), F.A.C.

Subsection 25-7.045(4)(a), F.A.C., states that each gas utility shall file a depreciation study for Commission review at least once every five years from the submission date of the previous study. Staff recommends that subsection 25-7.045(4)(a), F.A.C., be amended to state "or pursuant to Commission order and within the time specified in the order," acknowledging the Commission's authority to require such a depreciation study at any time set by the Commission.

Subsection 25-7.045(4)(a), F.A.C., states that electric utilities shall submit six copies of the information required for a depreciation study and at least three copies of the numerical data required when filing a depreciation study. Staff recommends amendments removing the requirement to file numerous copies of the information required in a depreciation study. Staff recommends that subsection 25-7.045(4)(a), F.A.C., be amended to specify that depreciation studies shall be filed in electronic format. The electronic filing requirement is consistent with the Commission's requirement for electronic filings.

Staff recommends amendments to subsection 25-7.045(9), F.A.C., stating that annual depreciation status reports shall be provided in electronic format. This electronic filing requirement updates Rule 25-7.045, F.A.C., and reflects the current Commission practice to require electronic filings.

Staff recommends amendments to Rule 25-7.045, F.A.C., which would add subsection 25-7.045(2)(c), F.A.C., setting forth the appropriate parameters for the calculation of depreciation reserve when plant investments are booked as a transfer. Staff recommends adding these parameters in subsection 25-7.045(2)(c), F.A.C., to clarify the required elements for the comparison.

Staff recommends amendments to subsections 25-7.045(5)(a) and (b), F.A.C., to clarify requirements for a comparison of current and proposed annual depreciation rates and the criteria for such a comparison. These amendments will also make Rule 25-7.045(5)(a), F.A.C., consistent with subsections 25-6.0436(5)(a) and (c), F.A.C.

Subsection 25-7.045(3)(a), F.A.C., references subsection 25-7.014, F.A.C., but does not directly refer to the USOA. Staff recommends a specific reference to the USOA in the subsection stating that the USOA is incorporated by reference in subsection 25-7.014(1), F.A.C.

Rule 25-7.046, Subcategories of Gas Plant for Depreciation

Rule 25-7.046, F.A.C., states that depreciation accounts for gas utilities, as listed in the rule, follow the primary plant accounts established by the USOA prescribed by the Federal Energy Regulatory Commission in the Code of Federal Regulations, revised April 1, 1981. Staff recommends an amendment to Rule 25-7.046, F.A.C., to reflect that the USOA for Natural Gas Companies as found in the Code of Federal Regulations is incorporated by reference in Rule 25-7.014, F.A.C., Records and Reports in General.

Staff recommends that "shall" be substituted for "should" making all sub-accounts prescribed by the rule mandatory when calculating depreciation. Staff also recommends that paragraph 25-7.046(4)(c), F.A.C., be amended to remove discretionary language and state that where any existing accounts are compatible with those listed in subsection (3) for depreciation purposes, those existing accounts shall be deemed to be in compliance with Rule 25-7.046, F.A.C.

Statement of Estimated Regulatory Costs

Pursuant to Section 120.54, F.S., agencies are encouraged to prepare a statement of estimated regulatory costs (SERC) before the adoption, amendment, or repeal of any rule. The SERC is appended as Attachment B to this recommendation. The SERC analysis also includes whether the rule amendment is likely to have an adverse impact on growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within five years after implementation.

The SERC concludes that the rule amendments will not likely directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in Florida within one year after implementation. Further, the SERC concludes that the rule amendments will not likely have an adverse impact on economic growth, private-sector job creation or employment, private sector investment, business competitiveness, productivity, or innovation in excess of $1 million in the

aggregate within five years of implementation. Thus, the rule amendments do not require legislative ratification pursuant to Section 120.541(3), F.S. In addition, the SERC states that the rule amendments will not have an adverse impact on small business and will have no impact on small cities or small counties. No regulatory alternatives were submitted pursuant to paragraph 120.541(1)(a), F.S. None of the impact/cost criteria established in paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended revisions.

Conclusion

Based on the foregoing, staff recommends the amendment of Rules 25-6.0436, 25-6.04364, 25-7.045, and 25-7.046, F.A.C.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no requests for hearing or comments are filed, the rules may be filed with the Department of State, and this docket should be closed. (Page)

Staff Analysis: If no requests for hearing or comments are filed, the rules may be filed with the Department of State, and this docket should be closed.

25-6.0436 Depreciation.

(1) For the purposes of this rule ~~part~~, the following definitions shall apply:

(a) Category or Category of Depreciable Plant – A grouping of plant for which a depreciation rate is prescribed. At a minimum it shall ~~should~~ include each plant account prescribed in subsection 25-6.014(1), F.A.C.

(b) Embedded Vintage – A vintage of plant in service as of the date of study or implementation of proposed rates.

(c) Mortality Data – Historical data by study category showing plant balances, additions, adjustments and retirements, used in analyses for life indications or calculations of realized life. ~~Preferably,~~ T~~t~~his is aged data in accord with the following:

1. The number of plant items or equivalent units (usually expressed in dollars) added each calendar year.

2. The number of plant items retired (usually expressed in dollars) each year and the distribution by years of placing of such retirements.

3. The net increase or decrease resulting from purchases, sales or adjustments and the distribution by years of placing of such amounts.

4. The number that remains in service (usually expressed in dollars) at the end of each year and the distribution by years of placing of such amounts.

(d) Net Book Value – The book cost of an asset or group of assets minus the accumulated depreciation or amortization reserve associated with those assets.

(e) Remaining Life Technique ~~Method~~ – The method of calculating a depreciation rate based on the unrecovered plant balance, the ~~less~~ average future net salvage, and the average remaining life. The formula ~~for calculating a Remaining Life Rate~~ is:

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

$$\text{Remaining Life Rate} = \frac{100\% - \text{Reserve \%} - \text{Average Future Net Salvage \%}}{\text{Average Remaining Life in Years}}$$

(f) Reserve (Accumulated Depreciation) – The amount of depreciation/amortization expense, salvage, cost of removal, adjustments, transfers, and reclassifications accumulated to date.

(g) Reserve Data – Historical data by study category showing reserve balances, debits and credits such as booked depreciation, expense, salvage and cost of removal and adjustments to the reserve utilized in monitoring reserve activity and position.

(h) Reserve Deficiency – An inadequacy in the reserve of a category as evidenced by a comparison of that reserve indicated as necessary under current projections of life and salvage with that reserve historically accrued. The latter figure may be available from the utility's records or may require retrospective calculation.

(i) Reserve Surplus – An excess in the reserve of a category as evidenced by a comparison of that reserve indicated as necessary under current projections of life and salvage with that reserve historically accrued. The latter figure may be available from the utility's records or may require retrospective calculation.

(j) Salvage Data – Historical data by study category showing bookings of retirements, gross salvage and cost of removal used in analysis of trends in gross salvage and cost of removal or for calculations of realized salvage.

(k) Theoretical Reserve or Prospective Theoretical Reserve – A calculated reserve based on components of the proposed rate using the formula:

Theoretical Reserve = Book Investment - Future Accruals - Future Net Salvage

(l) Vintage – The year of placement of a group of plant items or investment under study.

(m) Whole Life Technique ~~Method~~ – The method of calculating a depreciation rate based on

the wWhole lLife (aAverage sService lLife) and the aAverage nNet sSalvage. Both life and salvage components are the estimated or calculated composite of realized experience and expected activity. The formula is:

$$\text{Whole Life Rate} = \frac{100\% - \text{Average Net Salvage \%}}{\text{Average Service Life in Years}}$$

(2)(a) No utility shall change any existing depreciation rate or initiate any new depreciation rate without prior Commission approval.

(b) No utility shall reallocate accumulated depreciation reserves among any primary accounts and sub-accounts without prior Commission approval.

(c) When plant investment is booked as a transfer from a regulated utility depreciable account to another or from a regulated company to an affiliate, its associated ~~an appropriate~~ reserve amount shall also be booked as a transfer. When plant investment is sold from one regulated utility to an affiliate, the ~~an appropriate~~ associated reserve amount shall also be determined to calculate the net book value of the utility investment being sold. ~~Appropriate~~ Mmethods for determining the ~~appropriate~~ reserve amount associated with plant transferred or sold are as follows:

1. Where vintage reserves are not maintained, synthetization using the currently prescribed curve shape shall ~~may~~ be required. The same reserve percent associated with the original placement vintage of the related investment shall then be used in determining the ~~appropriate~~ amount of reserve to transfer.

2. Where the original placement vintage of the investment being transferred is unknown, the reserve percent applicable to the account in which the investment being transferred resides may be assumed ~~as appropriate~~ for determining the reserve amount to transfer.

3. Where the age of the investment being transferred is known and a history of the prescribed depreciation rates is known, a reserve can be determined by multiplying the age times the investment times the applicable depreciation rate(s).

4. The Commission shall consider any additional methods submitted by the utilities for determining the ~~appropriate~~ reserve amounts to transfer.

(3)(a) Each utility shall maintain depreciation rates and accumulated depreciation reserves in accounts or subaccounts in accordance with the Uniform System of Accounts for Public Utilities and Licensees as found in the Code of Federal Regulations, Title 18, Subchapter C, Part 101, for Major Utilities as revised April 1, 2013, which is incorporated by reference in Rule 25-6.014, F.A.C. ~~as prescribed by subsection 25-6.014(1), F.A.C.~~ Utilities may maintain further sub-categorization.

(b) Upon establishing a new account or subaccount classification, each utility shall request Commission approval of a depreciation rate for the new plant category.

(4)(a) Each company shall file a depreciation study for each category of depreciable property for Commission review at least once every four years from the submission date of the previous study or pursuant to Commission order and within the time specified in the order. A utility filing a depreciation study, regardless if a change in rates is being requested or not, shall submit to the Office of Commission Clerk ~~six copies of~~ the information required by paragraphs (5)~~(6)~~(a) through (g)~~(f)~~ of this rule in electronic format with formulas intact and unlocked ~~and at least three copies of the information required by paragraph (6)(g)~~.

(b) A utility proposing an effective date of the beginning of its fiscal year shall submit its depreciation study no later than the mid-point of that fiscal year.

(c) A utility proposing an effective date coinciding with the expected date of a revenue change initiated through a rate case proceeding shall submit its depreciation study no later than the filing date of its Minimum Filing Requirements.

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

(d) The plant balances may include estimates. Submitted data including plant and reserve balances or company planning involving estimates shall be brought to the effective date of the proposed rates.

(e) The possibility of corrective reserve transfers shall be investigated by the Commission prior to changing depreciation rates.

(f)~~(5)~~ Upon Commission approval by final order establishing an effective date, the utility shall reflect on its books and records the implementation of the depreciation ~~proposed~~ rates approved by the Commission ~~subject to adjustment when final depreciation rates are approved~~.

(5)~~(6)~~ A depreciation study shall include:

(a) A comparison of current and proposed depreciation ~~rates and~~ components for each category of depreciable plant. Components include average service life, age, curve shape, net salvage, and average remaining life. ~~Current rates shall be identified as to the effective date and proposed rates as to the proposed effective date.~~

(b) A comparison of current and proposed annual depreciation rates and expenses ~~as of the proposed effective date, resulting from current rates with those produced by the proposed rates for each category of depreciable plant~~. The comparison of current and proposed rates shall identify the proposed effective date for the proposed rates. The comparison of current and proposed annual expenses shall be calculated using current and proposed rates for each category of depreciable plant. Plant balances, reserve balances and percentages, remaining lives, and net salvage percentages shall be included in this comparison for each category of plant. ~~The plant balances may involve estimates. Submitted data including plant and reserve balances or company planning involving estimates shall be brought to the effective date of the proposed rates.~~

(c) Each recovery and amortization schedule currently in effect shall ~~should~~ be included

with any new filing showing total amount amortized, effective date, length of schedule, annual amount amortized and reason for the schedule.

(d) A comparison of the accumulated book reserve to the prospective theoretical reserve based on proposed rates and components for each category of depreciable plant to which depreciation rates are to be applied.

(e) A general narrative describing the service environment of the applicant company and the factors, e.g., growth, technology, physical conditions, necessitating a revision in rates.

(f) An explanation and justification for each study category of depreciable plant defining the specific factors that justify the life and salvage components and rates being proposed. Each explanation and justification shall include substantiating factors utilized by the utility in the design of depreciation rates for the specific category, e.g., company planning, growth, technology, physical conditions, trends. The explanation and justification shall discuss any proposed transfers of reserve between categories or accounts intended to correct deficient or surplus reserve balances. It shall ~~should~~ also state any statistical or mathematical methods of analysis or calculation used in design of the category rate.

(g) ~~The filing shall contain~~ Aall calculations, analysis and numerical basic data used in the design of the depreciation rate for each category of depreciable plant. Numerical data shall include plant activity (gross additions, adjustments, retirements, and plant balance at end of year) as well as reserve activity (retirements, accruals for depreciation expense, salvage, cost of removal, adjustments, transfers and reclassifications and reserve balance at end of year) for each year of activity from the date of the last submitted study to the date of the present study. When available, ~~To the degree possible,~~ retirement data ~~involving retirements~~ shall ~~should~~ be aged.

(h) The mortality and salvage data used by the company in the depreciation rate design must agree with activity booked by the utility. Unusual transactions not included in life or

salvage studies, e.g., sales or extraordinary retirements, must be specifically enumerated and explained.

(i)~~(7)(a) Utilities shall provide~~ C~~c~~alculations of depreciation rates using both the whole life technique ~~method~~ and the remaining life technique ~~method~~. The use of these techniques ~~methods~~ is required for all depreciable categories. Utilities may submit additional studies or methods for consideration by the Commission.

~~(b) The possibility of corrective reserve transfers shall be investigated by the Commission prior to changing depreciation rates.~~

~~(8)(a) Each company shall file a study for each category of depreciable property for Commission review at least once every four years from the submission date of the previous study unless otherwise required by the Commission.~~

~~(b) A utility proposing an effective date of the beginning of its fiscal year shall submit its depreciation study no later than the mid-point of that fiscal year.~~

~~(c) A utility proposing an effective date coinciding with the expected date of additional revenues initiated through a rate case proceeding shall submit its depreciation study no later than the filing date of its Minimum Filing Requirements.~~

(6)~~(9)~~ As part of the filing of the annual report pursuant to Rule 25-6.135, F.A.C., each utility shall include an annual depreciation status report. The annual depreciation status report~~s~~ shall be provided in electronic format. In the electronic format, the formulas must be intact and unlocked. The annual depreciation status report shall include booked plant activity (plant balance at the beginning of the year, additions, adjustments, transfers, reclassifications, retirements and plant balance at year end) and reserve activity (reserve balance at the beginning of the year, retirements, accruals, salvage, cost of removal, adjustments, transfers, reclassifications and reserve balance at year end) for each category of investment for which a depreciation rate, amortization, or capital recovery schedule has been approved. The report

shall indicate for each category ~~that:~~ whether there has been a change of plans or utility experience since the filing of the last annual depreciation status report requiring a revision of rates, amortization or capital recovery schedules. For any category where current conditions indicate a need for revision of depreciation rates, amortization, or capital recovery schedules and no revision is sought, the report shall explain why no revision is requested.

~~(a) There has been no change of plans or utility experience requiring a revision of rates, amortization or capital recovery schedules; or~~

~~(b) There has been a change requiring a revision of rates, amortization or capital recovery schedules.~~

(7)~~(10) For any category where current conditions indicate a need for revision of depreciation rates, amortization or capital recovery schedules and no revision is sought, the report shall explain why no revision is requested.~~

(a) Prior to the date of retirement of major installations, the Commission shall approve capital recovery schedules to correct associated calculated deficiencies where a utility demonstrates that (1) replacement of an installation or group of installations is prudent and (2) the associated investment will not be recovered by the time of retirement through the normal depreciation process.

(b) The Commission shall approve a special capital recovery schedule when an installation is designed for a specific purpose or for a limited duration.

(c) Associated plant and reserve activity, balances and the annual capital recovery schedule expense must be maintained as subsidiary records.

Rulemaking Authority 350.115, 350.127(2), 366.05(1), FS. Law Implemented 350.115, 366.04(2)(f), 366.06(1) FS. History–New 11-11-82, Amended 1-6-85, Formerly 25-6.436, Amended 4-27-88, 12-12-91, 12-11-00, 5-29-08, _____.

25-6.04364 Electric Utilities Dismantlement Studies.

(1) Each utility that owns a ~~fossil fuel~~ generating unit is required to establish a dismantlement accrual as approved by the Commission to accumulate a reserve ~~that is sufficient~~ to meet all expenses at the time of dismantlement. The purpose of the study required by subsection (3) is to obtain ~~sufficient~~ information to update cost estimates based on new developments, additional information, technological improvements, and forecasts; to evaluate alternative methodologies; and to revise the annual accrual needed to recover the costs. This rule does not apply to nuclear generating plants, which are addressed in Rule 25-6.04365, F.A.C.

(2) For the purpose of this rule, the following definitions shall apply:

(a) "Contingency Costs." A specific provision for unforeseeable elements of cost within the defined project scope.

(b) "Dismantlement." The process of safely managing, removing, demolishing, disposing, or converting for reuse the materials and equipment that remain at the ~~fossil fuel~~ generating unit following its retirement from service and restoring the site to a marketable or useable condition.

(c) "Dismantlement Costs." The costs for the ultimate physical removal and disposal of plant and site restoration, minus any attendant gross salvage amount, upon final retirement of the site or unit from service.

(3) Each utility shall file a dismantlement study for each generating site once every 4 years from the submission date of the previous study or pursuant to ~~unless otherwise required by~~ Commission order~~.~~ and within the time specified in the order. The study shall be site-specific unless a showing is made by the utility that a site-specific study is not possible. A utility may file a study sooner than 4 years. Each utility's dismantlement study shall include:

(a) A narrative describing each ~~fossil fuel~~ generating unit, including the in-service date and

estimated retirement date.

(b) A list of all entities owning an interest in each generating unit and the percentage of ownership by each entity.

(c) The dismantlement study methodology.

(d) A summary of the major assumptions used in the study.

(e) The methodology selected to dismantle each generating unit and support for the selection.

(f) The methodology and escalation rates used in converting the current estimated dismantlement costs to future estimated dismantlement costs and supporting documentation and analyses.

(g) The total utility and jurisdictional dismantlement cost estimates in current dollars for each unit.

(h) The total utility and jurisdictional dismantlement cost estimates in future dollars for each unit.

(i) For each year, the estimated amount of dismantlement expenditures.

(j) The projected date each generating unit will cease operations.

(k) For each site, a comparison of the current approved annual dismantlement accruals with those proposed. Current accruals shall be identified as to the effective date and proposed accruals to the proposed effective date.

(l) A summary and explanation of material differences between the current study and the utility's last filed study including changes in methodology and assumptions.

(m) Supporting schedules, analyses, and data, including the contingency allowance, used in developing the dismantlement cost estimates and annual accruals proposed by the utility. Supporting schedules shall include the inflation analysis.

(4) The dismantlement annual accrual shall be calculated using the current cost estimates

escalated to the expected dates of actual dismantlement. The future costs less amounts recovered to date shall then be discounted in a manner that accrues the costs over the remaining life span of the unit.

(5) Dismantlement accruals shall be recorded monthly to assure that the costs for dismantlement have been provided for at the time the production unit or site ceases operations.

(6) A utility shall not establish a new annual dismantlement accrual, revise its annual dismantlement accrual, or transfer a dismantlement reserve without prior Commission approval.

(7) The annual dismantlement accrual shall be a fixed dollar amount and shall be based on a 4-year average of the accruals related to the years between the dismantlement study reviews.

(8) The accumulated dismantlement reserve and accruals shall be maintained in a subaccount of Account 108 "Accumulated Depreciation" and separate from the accumulated depreciation reserve and expenses. Subsidiary records shall include sufficient detail to allow for separate site or unit reporting.

Rulemaking Authority 350.115, 350.127(2), 366.05(1) FS. Law Implemented 366.041, 366.05(1), 366.06(1) FS. History–New 12-30-03, Amended _____.

25-7.045 Depreciation.

(1) For the purpose of this rule ~~part~~, the following definitions shall apply:

(a) Category or Category of Depreciable Plant – A grouping of plant for which a depreciation rate is prescribed. At a minimum it shall ~~should~~ include each plant account prescribed in Rule 25-7.046, F.A.C.

(b) Embedded Vintage – A vintage of plant in service as of the date of study or implementation of proposed rates.

(c) Mortality Data – Historical data by study category showing plant balances, additions, adjustments and retirements, used in analyses for life indications or for calculations of realized life. ~~Preferably~~ T~~t~~his is aged data in accord with the following:

1. The number of plant items or equivalent units (usually expressed in dollars) added each calendar year.

2. The number of plant items retired (usually expressed in dollars) each year and the distribution by years of placing of such retirements.

3. The net increase or decrease resulting from purchases, sales or adjustments and the distribution by years of placing of such amounts.

4. The number that remains in service (usually expressed in dollars) at the end of each year and the distribution by years of placing of such amounts.

(d) Net Book Value - The book cost of an asset or group of assets minus the accumulated depreciation or amortization reserve associated with those assets.

(e)~~(d)~~ Remaining Life Technique ~~Method~~ – The method of calculating a depreciation rate based on the unrecovered plant balance, the ~~less~~ average future net salvage and the average remaining life. The formula ~~for calculating a Remaining Life Rate~~ is:

$$\text{Remaining Life Rate} = \frac{100\% - \text{Reserve \%} - \text{Average Future Net Salvage \%}}{\text{Average Remaining Life in Years}}$$

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

(f) Reserve (Accumulated Depreciation) – The amount of depreciation/amortization expense, salvage, cost of removal, adjustments, transfers, and reclassifications accumulated to date.

(g)~~(e)~~ Reserve Data – Historical data by study category showing reserve balances, debits and credits, such as booked depreciation expense, salvage and cost of removal, and adjustments to the reserve utilized in monitoring reserve activity and position.

(h)~~(f)~~ Reserve Deficiency – An inadequacy in the reserve of a category as evidenced by a comparison of that reserve indicated as necessary under current projections of life and salvage with that reserve historically accrued. The latter figure may be available from the utility's records or may require retrospective calculation.

(i)~~(g)~~ Reserve Surplus – An excess in the reserve of a category as evidenced by a comparison of that reserve indicated as necessary under current projections of life and salvage with that reserve historically accrued. The latter figure may be available from the utility's records or may require retrospective calculation.

(j)~~(h)~~ Salvage Data – Historical data by study category showing bookings of retirements, gross salvage and cost of removal used in analysis of trends in gross salvage and cost of removal or for calculations of realized salvage.

(k)~~(i)~~ Theoretical Reserve or Prospective Theoretical Reserve – A calculated reserve based on components of the proposed rate using the formula:

Theoretical Reserve = Book Investment – Future Accruals – Future Net Salvage.

(l)~~(j)~~ Vintage – The year of placement of a group of plant items or investment under study.

(m)~~(k)~~ Whole Life Technique ~~Method~~ – The method of calculating a depreciation rate based on the w~~W~~hole l~~L~~ife (a~~A~~verage s~~S~~ervice l~~L~~ife) and the a~~A~~verage n~~N~~et s~~S~~alvage. Both life and salvage components are the estimated or calculated composite of realized experience and expected activity. The formula is:

Whole Life Rate = 100% - Average Net Salvage %

Average Service Life in Years

(2)(a) No utility shall ~~may~~ change any existing depreciation rate or initiate any new depreciation rate without prior Commission approval.

(b) No utility shall ~~may~~ reallocate accumulated depreciation reserves among any primary accounts and sub-accounts without prior Commission approval.

(c) When plant investment is booked as a transfer from a regulated utility depreciable account to another or from a regulated company to an affiliate, its associated reserve amount shall also be booked as a transfer. When plant investment is sold from one regulated utility to an affiliate, the associated reserve amount shall also be determined to calculate the net book value of the utility investment being sold. Methods for determining the reserve amount associated with plant transferred or sold are as follows:

1. Where vintage reserves are not maintained, synthesization using the currently prescribed curve shape shall be required. The same reserve percent associated with the original placement vintage of the related investment shall then be used in determining the amount of reserve to transfer.

2. Where the original placement vintage of the investment being transferred is unknown, the reserve percent applicable to the account in which the investment being transferred resides shall be assumed for determining the reserve amount to transfer.

3. Where the age of the investment being transferred is known and a history of the prescribed depreciation rates is known, a reserve can be determined by multiplying the age times the investment times the applicable depreciation rate(s).

4. The Commission shall consider any additional methods submitted by the utilities for determining reserve amounts to transfer.

(3)(a) Each utility shall maintain depreciation rates and accumulated depreciation reserves in accounts or subaccounts in accordance with the Uniform System of Accounts for Natural Gas Companies (USOA) as found in the Code of Federal Regulations, Title 18, Subchapter F, Part 201, as revised April 1, 2013, which is incorporated by reference in Rule 25-7.014(1), F.A.C. ~~as prescribed by Rule 25-7.046, F.A.C.~~ Utilities may maintain further sub-categorization.

(b) Upon establishing a new account or subaccount classification, each utility shall request Commission approval of a depreciation rate for the new plant category.

(4)(a) Each company shall file a study for each category of depreciable property for Commission review at least once every five years from the submission date of the previous study or pursuant to Commission order and within the time specified in the order.

A utility filing a depreciation study, regardless if a change in rates is being requested or not, shall submit to the Office of Commission Clerk ~~six copies of~~ the information required by paragraphs (5)~~(6)~~(a) through (g) ~~(f) and (h)~~ of this rule in electronic format with formulas intact and unlocked ~~and at least three copies of the information required by paragraph (6)(g)~~.

(b) A utility proposing an effective date of the beginning of its fiscal year shall submit its depreciation study no later than the mid-point of that fiscal year.

(c) A utility proposing an effective date coinciding with the expected date of additional revenues initiated through a rate case proceeding shall submit its depreciation study no later than the filing date of its Minimum Filing Requirements.

(d) The plant balances may include estimates. Submitted data including plant and reserve balances or company planning involving estimates shall be brought to the effective date of the proposed rates.

(e) The possibility of corrective reserve transfers shall be investigated by the Commission prior to changing depreciation rates.

(f)~~(5)~~ Upon Commission approval by final order establishing an effective date, the utility shall ~~may~~ reflect on its books and records the implementation of the depreciation ~~proposed~~ rates~~,~~approved by the Commission ~~subject to adjustment when final depreciation rates are approved~~.

(5)~~(6)~~ A depreciation study shall include:

(a) A comparison of current and proposed depreciation ~~rates and~~ components for each category of depreciable plant. Components include average service life, age, curve shape, net salvage, and average remaining life. ~~Current rates shall be identified as to the effective date and proposed rates as to the proposed effective date.~~

(b) A comparison of current and proposed annual depreciation rates and expenses ~~resulting from current rates with those produced by the proposed rates for each category of depreciable plant~~. The comparison of current and proposed rates shall identify the proposed effective date for the proposed rates. The comparison of current and proposed annual expenses shall be calculated using current and proposed rates for each category of depreciable plant. Plant balances, reserve balances and percentages, remaining lives, and net salvage percentages shall be included in this comparison for each category of plant. ~~The plant balances may involve estimates. Submitted data including plant and reserve balances or company planning involving estimates should be brought to the effective date of the proposed rates.~~

(c) Each recovery and amortization schedule currently in effect shall ~~should~~ be included with any new filing showing total amount amortized, effective date, length of schedule, annual amount amortized and reason for the schedule.

(d) A comparison of the accumulated book reserve to the prospective theoretical reserve based on proposed rates and components for each category of depreciable plant to which depreciation rates are to be applied.

(e) A general narrative describing the service environment of the applicant company and

the factors, e.g., growth, technology, physical conditions, leading to the present application for a revision in rates.

(f) An explanation and justification for each study category of depreciable plant defining the specific factors that justify the life and salvage components and rates being proposed. Each explanation and justification shall include substantiating factors utilized by the utility in the design of the depreciation rates for the specific category, e.g., company planning, growth, technology, physical conditions, trends. The explanation and justification shall discuss any proposed transfers of reserve between categories or accounts intended to correct deficient or surplus reserve balances. It shall ~~should~~ also state any statistical or mathematical methods of analysis or calculation used in design of the category rate.

(g) ~~The filing shall contain~~ Aall calculations, analysis and numerical basic data used in the design of the depreciation rate for each category of depreciable plant. Numerical data shall include plant activity (gross additions, adjustments, retirements, and plant balance at end of year) as well as reserve activity (retirements, accruals for depreciation expense, salvage, cost of removal, adjustments, transfers and reclassifications and reserve balance at end of year) for each year of activity from the date of the last submitted study to the date of the present study. When available, ~~To the degree possible,~~ retirement data ~~involving retirements~~ shall ~~should~~ be aged.

(h) The mortality and salvage data used by the company in the depreciation rate design must agree with activity booked by the utility. Unusual transactions not included in life or salvage studies, e.g., sales or extraordinary retirements, must be specifically enumerated and explained.

~~(i)(7)(a) Utilities shall provide~~ Ccalculations of depreciation rates using both the whole life technique and the remaining life technique ~~method~~. The use of these techniques ~~methods~~ is required for all depreciable categories. Utilities may submit additional studies or methods for

consideration by the Commission.

~~(b) The possibility of corrective reserve transfers shall be investigated by the Commission prior to changing depreciation rates.~~

~~(8)(a) Each company shall file a study for each category of depreciable property for Commission review at least once every five years from the submission date of the previous study unless otherwise required by the Commission.~~

~~(b) A utility proposing an effective date of the beginning of its fiscal year shall submit its depreciation study no later than the mid-point of that fiscal year.~~

~~(c) A utility proposing an effective date coinciding with the expected date of additional revenues initiated through a rate case proceeding shall submit its depreciation study no later than the filing date of its Minimum Filing Requirements.~~

(6)~~(9)~~ As part of the filing of the annual report under subsection 25-7.014(3), F.A.C., each utility shall include an annual depreciation status report. The annual depreciation status report shall be provided in electronic format. In the electronic format, the formulas must be intact and unlocked. The annual depreciation status report shall include booked plant activity (plant balance at the beginning of the year, additions, adjustments, transfers, reclassifications, retirements and plant balance at year end) and reserve activity (reserve balance at the beginning of the year, retirements, accruals, salvage, cost of removal, adjustments, transfers, reclassifications and reserve balance at end of year) for each category of investment for which a depreciation rate, amortization schedule, or capital recovery schedule has been approved. The report shall indicate for each category ~~that:~~ whether there has been a change of plans or utility experience since the filing of the last annual depreciation status report requiring a revision of the rates, amortization, or capital recovery schedules. For any category where current conditions indicate a need for revision of depreciation rates, amortization, or capital recovery schedules and no revision is sought, the report shall explain why no revision is

requested.

~~(a) There has been no change of plans or utility experience requiring a revision of the rates, amortization, or capital recovery schedules; or~~

~~(b) There has been a change requiring a revision of rates, amortization, or capital recovery schedules. For any category where current conditions indicate a need for revision of depreciation rates, amortization, or capital recovery schedules and no revision is sought, the report shall explain why no revision is requested.~~

(7)~~(10)~~(a) Prior to the date of retirement of major installations, the Commission may approve capital recovery schedules to correct associated calculated deficiencies where a utility demonstrates that (1) replacement of an installation or group of installations is prudent, and (2) the associated investment will not be recovered by the time of retirement through the normal depreciation process.

(b) The Commission shall ~~may~~ approve a special capital recovery schedule when an installation is designed for a specific purpose or for a limited duration.

(c) Associated plant and reserve activity, balances and the annual capital recovery schedule expense must be maintained as subsidiary records.

Rulemaking Authority 350.127(2), 350.115, 366.05(1) FS. Law Implemented 350.115, 366.04(2(f), 366.06, 366.06(1) FS. History–New 11-11-82, Amended 1-6-85, Formerly 25-7.45, Amended 4-27-88, 12-12-91, 5-29-08, _____.

25-7.046 Subcategories of Gas Plant for Depreciation.

(1) The accounts under subsection (3) below are to be used in the design of depreciation rates. They are intended to group together items which are relatively homogeneous in their expected life and salvage characteristics. Reserve, mortality data, salvage and costs of removal shall ~~should~~ be maintained accordingly for each depreciation category for which a depreciation rate is to be applied. This shall ~~should~~ be done on the books of the company, or as a side record for depreciation study use only.

(2)(a) No company shall establish a new sub-account that would represent less than 10% of the original primary account unless it meets the following criteria:

1. Introduction of a new technology.

2. The present inclusion of an obsolescent/dying technology in a viable technology.

(b) Any company may further develop sub-accounts within the listed primary account as appropriate for its plant.

(3) The depreciation accounts listed below shall be in accordance with the Uniform System of Accounts for Natural Gas Companies (USOA) as found in the Code of Federal Regulations, Title 18, Subchapter F, Part 201, as revised April 1, 2013, which is incorporated by reference in Rule 25-7.014(1), F.A.C. New depreciation subaccounts shall be established under these accounts as listed in subsection 25-7.014(1), F.A.C. ~~The accounts listed below directly follow the primary plant accounts prescribed in the Uniform System of Accounts prescribed by the Federal Energy Regulatory Commission in the Code of Federal Regulations, Title 18, Subchapter F, Part 201, as revised, April 1, 1981, introducing sub-divisions within those accounts for the purpose of uniformity among the companies in depreciation studies.~~

(a)~~I.~~ Local Storage Plant.

1.~~A.~~ Structures and Improvements – (Account 361)

2.~~B.~~ Gas Holders – (Account 362)

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

3.~~C.~~ Other – (Account 363) – Equipment such as compressors, gauges and other instruments used in connection with the storage of gas in holders.

(b)~~H.~~ Distribution Plant.

1.~~A.~~ Structures and Improvements – (Account 375)

2.~~B.~~ Mains – (Account 376) – The following sub-accounts shall ~~should~~ be used:

a.~~1.~~ Plastic

b.~~2.~~ Other – cast iron, steel, etc.

3.~~C.~~ Compressor Station Equipment – (Account 377)

4.~~D.~~ Measuring and Regulating Equipment – General – (Account 378) – Equipment used in measuring and regulating gas in connection with distribution systems other than the measurements of gas deliveries to customers.

5.~~E.~~ Measuring and Regulating Equipment – City Gate – (Account 379) – Equipment used in measuring of gas at entry points to distribution systems.

6.~~F.~~ Services – (Account 380) – The following sub-accounts shall ~~should~~ be used:

a.~~1.~~ Plastic

b.~~2.~~ Other – cast iron, steel, etc.

7.~~G.~~ Meters – (Account 381)

8.~~H.~~ Meter Installations – (Account 382)

9.~~I.~~ Regulators – (Account 383)

10.~~J.~~ Regulator Installations – (Account 384)

11.~~K.~~ Industrial Measuring and Regulating Equipment – (Account 385)

12.~~L.~~ Other Property on Customer's Premises – (Account 386) – Investment of equipment owned by the company installed on the customer's premises that is not includible in other accounts.

13.~~M.~~ Other Equipment – (Account 387) – Investment in equipment used for the

distribution system not included in any of the above accounts such as fire protection equipment, leak detectors, pipe locators. ~~, etc.~~

(c)~~III.~~ General Plant.

1.~~A~~. Structures and Improvements – (Account 390)

2.~~B.~~ Office Furniture and Equipment – (Account 391) – The following sub-accounts shall ~~should~~ be used:

a.~~1.~~ Office Furniture – Regular office furniture and furnishings and miscellaneous equipment such as lounge equipment.

b.~~2.~~ Office devices such as typewriters, calculating, reproducing, addressing, blueprinting, cash registers, check writers and other office machines.

c.~~3.~~ Computers and peripheral equipment

3.~~C.~~ Transportation Equipment – (Account 392) – The following sub-accounts shall ~~should~~ be used:

a.~~1.~~ Passenger cars and light trucks (trucks of one ton capacity or less)

b.~~2.~~ Heavy trucks (trucks of greater than one ton capacity)

c.~~3.~~ Special purpose vehicles such as trailers

d.~~4.~~ Airplanes

4.~~D.~~ Stores Equipment – (Account 393)

5.~~E.~~ Tools, Shop and Garage Equipment – (Account 394)

6.~~F.~~ Laboratory Equipment – (Account 395)

7.~~G.~~ Power Operated Equipment – (Account 396)

8.~~H.~~ Communication Equipment – (Account 397)

9.~~I.~~ Miscellaneous Equipment – (Account 398) – Investment in miscellaneous equipment such as kitchen equipment, infirmary equipment. ~~, etc.~~

(4) The accounts under subsection (3) shall be implemented as of the beginning of the next

fiscal year following the adoption of this rule. As of that point in time:

(a) Reserve activity data, mortality activity data, salvage and costs of removal are to be recorded to these accounts for subsequent activity.

(b) The separation of embedded investments and reserves under prior accounts into balances relating to accounts under subsection (3) may require estimation. For accounts where vintage data is to be maintained, development of the vintaged distributions of those investments may require synthesization. Vintaged distribution of the reserves is not required.

(c) Where any existing accounts are~~, in the opinion of the Commission, essentially~~ compatible with those listed in subsection (3) for depreciation study purposes, those existing accounts shall be deemed to be in compliance with this rule.

Rulemaking Authority 350.127(2), 366.05(1) FS. Law Implemented 366.05(1), 366.06(1) FS. History–New 11-7-85. Formerly 25-7.46. Amended, _____.

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: September 3, 2015

TO: Pamela H. Page, Senior Attorney, Office of the General Counsel

FROM: Clyde D. Rome, Public Utility Analyst II, Division of Economics

RE: Statement of Estimated Regulatory Costs (SERC) for Recommended Revisions to Chapter 25-6 (Electric Service by Electric Public Utilities), and Chapter 25-7 (Gas Service by Gas Public Utilities), Florida Administrative Code (F.A.C.)

The purpose of this rulemaking initiative is to update, clarify, and streamline depreciation-related Commission rules for investor-owned electric and gas utilities. Specifically, staff is recommending the amendment of Rules 25-6.0436 (Depreciation), 25-6.04364 (Electric Utilities Dismantlement Studies), 25-7.045 (Depreciation), and 25-7.046 (Subcategories of Gas Plant for Depreciation), F.A.C. As noted in the attached SERC, five investor-owned electric utilities and eight investor-owned gas utilities would be affected by the recommended revisions.

The recommended amendments to Rules 25-6.0436 and 25-7.045, F.A.C., would clarify language and requirements, codify existing practices, and would reorganize and reorder portions of the rules in order to improve overall clarity. The changes to Rule 25-6.04364, F.A.C., reflect a changing energy generation environment and would augment the current requirements for electric utilities to provide dismantlement studies for all fossil-fuel generating units; henceforth, utilities would be required to provide dismantlement studies for all generating units that are not subject to such requirements pursuant to Rule 25-6.04365 (Nuclear Decommissioning), F.A.C. Recommended amendments to Rules 25-7.046, 25-7.045, and 25-6.0436, F.A.C., would update the effective date of the plant accounts prescribed in the federal Uniform System of Accounts.

The attached SERC addresses the considerations required pursuant to Section 120.541, Florida Statutes (F.S.). No workshop was requested in conjunction with the recommended rule revisions. No regulatory alternatives were submitted pursuant to paragraph 120.541(1)(a), F.S. None of the impact/cost criteria established in paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended revisions.

cc: (Ollila, Draper, McNulty, Daniel, Shafer, Cibula, SERC file)

FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Rules 25-6.0436, 25-6.04364, 25-7.045, 25-7.046, F.A.C.

1. Will the proposed rule have an adverse impact on small business? [120.541(1)(b), F.S.] (See Section E., below, for definition of small business.)

Yes ☐ No ☒

If the answer to Question 1 is "yes", see comments in Section E.

2. Is the proposed rule likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in this state within 1 year after implementation of the rule? [120.541(1)(b), F.S.]

Yes ☐ No ☒

If the answer to either question above is "yes", a Statement of Estimated Regulatory Costs (SERC) must be prepared. The SERC shall include an economic analysis showing:

A. Whether the rule directly or indirectly:

(1) Is likely to have an adverse impact on any of the following in excess of $1 million in the aggregate within 5 years after implementation of the rule? [120.541(2)(a)1, F.S.]

Economic growth	Yes ☐ No ☒
Private-sector job creation or employment	Yes ☐ No ☒
Private-sector investment	Yes ☐ No ☒

(2) Is likely to have an adverse impact on any of the following in excess of $1 million in the aggregate within 5 years after implementation of the rule? [120.541(2)(a)2, F.S.]

Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets)	Yes ☐ No ☒
Productivity	Yes ☐ No ☒
Innovation	Yes ☐ No ☒

1

(3) Is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within 5 years after the implementation of the rule? [120.541(2)(a)3, F.S.]

Yes ☐ No ☒

Economic Analysis: A summary of the recommended rule revisions is included in the attached memorandum to Counsel. Specific elements of the associated economic analysis are identified below in Sections B through F of this SERC. None of the impact/cost criteria established in paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended rule revisions.

B. A good faith estimate of: [120.541(2)(b), F.S.]

(1) The number of individuals and entities likely to be required to comply with the rule.

Five electric utilities and eight gas utilities.

(2) A general description of the types of individuals likely to be affected by the rule.

The affected entities are investor-owned electric and gas utilities operating in Florida.

C. A good faith estimate of: [120.541(2)(c), F.S.]

(1) The cost to the Commission to implement and enforce the rule.

☒ None. To be done with the current workload and existing staff.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

(2) The cost to any other state and local government entity to implement and enforce the rule.

☒ None. The rule will only affect the Commission.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

(3) Any anticipated effect on state or local revenues.

☒ None

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule. [120.541(2)(d), F.S.]

☐ None. The rule will only affect the Commission.

☐ Minimal. Provide a brief explanation.

☒ Other. Provide an explanation for estimate and methodology used.

Rules 25-6.0436 and 25-7.045, F.A.C., include definitions of depreciation terms and specify the requirements for depreciation rate changes, depreciation studies, annual reports, and capital recovery schedules. The recommended amendments to these rules should benefit affected entities by codifying current practices and by making the rules more specific regarding depreciation matters, including the compilation and filing of studies. Staff anticipates that the rule clarifications would likely result in fewer data requests or discovery questions; therefore, depreciation study costs potentially could be reduced. Affected entities also potentially may benefit from the removal of the requirement for paper copy filings.

Recommended revisions to Rule 25-6.04364, F.A.C., would require electric utilities to provide dismantlement studies for all generating units that are not subject to such requirements pursuant to Rule 25-6.04365, F.A.C. Staff issued a data request to the investor-owned electric utilities to ascertain whether the new language would change the manner in which the utilities filed dismantlement studies with the Commission, thereby resulting in potential additional transactional costs. All utilities indicated that the recommended revisions would not cause a change in their practices of filing dismantlement studies with the Commission; therefore, no additional transactional costs are anticipated.

No additional costs are anticipated as a result of updating the Uniform System of Accounts references in Rules 25-7.046, 25-7.045, and 25-6.0436, F.A.C.

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E. An analysis of the impact on small businesses, and small counties and small cities: [120.541(2)(e), F.S.]

(1) "Small business" is defined by Section 288.703, F.S., as an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than $5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As to sole proprietorships, the $5 million net worth requirement shall include both personal and business investments.

☒ No adverse impact on small business.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census. A "small county" is defined by Section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

☒ No impact on small cities or small counties

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

F. Any additional information that the Commission determines may be useful. [120.541(2)(f), F.S.]

☒ None.

Additional Information:

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G. A description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule. [120.541(2)(g), F.S.]

☒ No regulatory alternatives were submitted.

☐ A regulatory alternative was received from

☐ Adopted in its entirety.

☐ Rejected. Describe what alternative was rejected and provide a statement of the reason for rejecting that alternative.

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Item 3

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 18, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Cowdery)
Division of Economics (Draper)

RE: Docket No. 160013-EU – Petition for declaratory statement regarding the Florida Public Service Commission's jurisdiction to adjudicate the Town of Indian River Shores' constitutional rights.

AGENDA: 03/01/16 – Regular Agenda – Decision of Declaratory Statement – Participation is at the Commission's discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brisé

CRITICAL DATES: May not be deferred – statutory deadline for issuing final order is April 4, 2016

SPECIAL INSTRUCTIONS: None

Case Background

On January 5, 2016, the Town of Indian River Shores (Indian River Shores) filed a petition for declaratory statement (Petition). Pursuant to Rule 28-105.0024, Florida Administrative Code (F.A.C.), a Notice of Declaratory Statement was published in the January 7, 2016, edition of the Florida Administrative Register, informing interested persons of the Petition. The Petition asks the Commission to declare:

> The PSC lacks the jurisdiction under Chapter 366, Florida Statutes, or any other applicable law, to interpret Article VIII, Section 2(c) of the Florida Constitution, and Section 166.021, Florida Statutes, for the purposes of adjudicating and resolving whether the Town has a constitutional right, codified in the statutes, to

> be protected from unconsented exercises of extra-territorial powers by Vero Beach within the Town's corporate limits.

On January 27, 2016, the City of Vero Beach (Vero Beach) filed a motion to intervene and its response in opposition to the Petition (Vero Beach's Response). On February 3, 2016, Indian River Shores filed its reply to Vero Beach's response in opposition to its petition (Indian River Shores' Reply). On February 17, 2016, intervention was granted to Vero Beach.

This recommendation addresses the Town of Indian River Shores' Petition for Declaratory Statement. Pursuant to Section 120.565(3), Florida Statutes (F.S.), a final order on the Petition for declaratory statement must be issued within 90 days, which is April 4, 2016. The Commission has jurisdiction pursuant to Section 120.565 and Chapter 366, F.S.

Discussion of Issues

Issue 1: Should the Commission issue a declaratory statement on the Town of Indian River Shores' Petition for Declaratory Statement?

Recommendation: Yes. The Commission should issue a declaratory statement on the Town of Indian River Shores' Petition for Declaratory Statement. However, the Commission should not issue the declaratory statement requested by the Petition. Instead, the Commission should declare that the Commission has the jurisdiction under Section 366.04, F.S., to determine whether Vero Beach has the authority to continue to provide electric service within the corporate limits of the Town of Indian River Shores upon expiration of the franchise agreement between the Town of Indian River Shores and the City of Vero Beach. The Commission should state that the declaratory statement will be controlling only as to the facts relied upon in this docket and not as to other, different or additional facts. (Cowdery)

Staff Analysis: Declaratory statements are governed by Section 120.565, F.S., and the Uniform Rules of Procedure in Chapter 28-105, F.A.C. Section 120.565, F.S., states, in pertinent part:

> (1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.
>
> (2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule or order that the petitioner believes may apply to the set of circumstances.

Rule 28-105.001, F.A.C., Purpose and Use of Declaratory Statement, provides:

> A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

Rule 28-105.002(5), F.A.C., requires a petition for declaratory statement to include a description of how the statutory provisions or orders on which a declaratory statement is sought may substantially affect the petitioner in the petitioner's particular set of circumstances. A party seeking a declaratory statement must not only show that it is in doubt as to the existence or nonexistence of some right or status, but also that there is a bona fide, actual, present, and practical need for the declaration. *State Department of Environmental Protection v. Garcia*, 99 So. 2d 539, 544-45 (Fla. 3d DCA 2011). A declaratory statement procedure is intended to enable members of the public to definitively resolve ambiguities of law arising in the planning of their future affairs and to enable the public to secure definitive binding advice as to the applicability of

agency-enforced law to a particular set of facts. *Department of Business and Professional Regulation, Div. of Pari-Mutual Wagering v. Investment Corp. of Palm Beach*, 747 So. 2d 374, 382 (Fla. 1999).

Staff recommends that, in accordance with Rule 28-105.003, F.A.C., the Commission should rely on the facts alleged in this proceeding without taking a position on the validity of those facts. If the Commission issues a declaratory statement, it will be controlling only as to the facts relied upon and not as to other, different or additional facts. As the Commission's conclusion would be limited to the facts described herein, any alteration or modification of those facts could materially affect the conclusions reached in any declaratory statement issued. If the Commission issues a declaratory statement, the Commission should state that the order will be controlling only as to the facts relied upon and not as to other, different or additional facts.

I. The Town of Indian River Shores' Petition for Declaratory Statement

A. Indian River Shores' particular circumstances and facts

The Petition states that Indian River Shores is an incorporated Florida municipality of approximately 4,000 residents in Indian River County, Florida, that was established by Chapter 29163, Laws of Florida (1953). The Petition states that Vero Beach first provided electric service to Indian River Shores' residents pursuant to a 1968 agreement that was superseded by a 1986 franchise agreement between Indian River Shores and Vero Beach (Franchise Agreement). Indian River Shores has notified Vero Beach that it will not renew the Franchise Agreement when it expires on November 6, 2016. The Petition alleges that upon expiration of the Franchise Agreement, Vero Beach will no longer have Indian River Shores' consent to furnish electricity to Indian River Shores' residents.

The Petition acknowledges that Vero Beach has been authorized to provide electric service to a portion of Indian River Shores' residents pursuant to Commission territorial orders approving territorial agreements between Vero Beach and Florida Power and Light (Territorial Orders), but believes that Vero Beach does not have the statutory authority under general or special law to provide electric service to Indian River Shores without Indian River Shores' consent as is required by Article VIII, section 2(c), Florida Constitution. The Petition states that under the Territorial Orders, FPL serves approximately 739 customers and Vero Beach serves approximately 3,500 customers located within Indian River Shores. The Petition alleges that FPL has proposed to purchase Vero Beach's electrical facilities in Indian River Shores and that such a purchase would enable Indian River Shores and its residents to receive electric service from one utility.

The Petition alleges that Indian River Shores filed a lawsuit against Vero Beach in the Circuit Court case *Town of Indian River Shores v. City of Vero Beach,* Case No. 31-2014CA-000748 (Circuit Court Lawsuit), asking the Circuit Court to adjudicate the constitutional and statutory question of whether Vero Beach has the requisite statutory authority to exercise extra-territorial powers within Indian River Shores' corporate boundaries absent Indian River Shores' consent. A copy of the portion of Indian River Shores' Amended Complaint relevant to the Petition is attached as Attachment A. The Petition states that Vero Beach filed a Motion to Dismiss this issue and that legal counsel for the Commission appeared as amicus curiae in support of Vero

Beach's Motion to Dismiss, asserting that only the Commission and not the Circuit Court had jurisdiction to resolve the issues presented by Indian River Shores.

The Petition alleges that in the Circuit Court Lawsuit, Indian River Shores agreed that only the Commission can approve a modification of the territorial agreement between FPL and Vero Beach and that Vero Beach can continue to provide electric service in Indian River Shores until the Commission modifies the Territorial Order. The Petition emphasized that in the Circuit Court Lawsuit, Indian River Shores made sure that the Court and the parties understood that Indian River Shores was only asking the Court for a declaratory judgment on a threshold constitutional question as to whether Vero Beach has the requisite organic statutory authority conferred by general or special law to furnish electricity to inside the corporate boundaries of Indian River Shores without Indian River Shores' consent. The Petition states that the Circuit Court accepted the jurisdictional assertions of the Commission's counsel and dismissed Indian River Shores' request for declaratory relief with prejudice because the Circuit Court lacked jurisdiction (Court's Order of Dismissal). A copy of the Court's Order of Dismissal is attached as Attachment B.

B. Statutory provisions, orders, and rules to be applied to the facts

The Petition states that Section 366.04, F.S., appears to be the only necessary statute to consider with respect to the jurisdictional question presented. Section 366.04, F.S., states, in pertinent part:

> (1) In addition to its existing functions, the [C]ommission shall have jurisdiction to regulate and supervise each public utility with respect to its rates and service; assumption by it of liabilities or obligations as guarantor, endorser, or surety; and the issuance and sale of its securities. . . . The jurisdiction conferred upon the [C]ommission shall be exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and, in case of conflict therewith, all lawful acts, orders, rules, and regulations of the [C]ommission shall in each instance prevail.
>
> (2) In the exercise of its jurisdiction, the [C]ommission shall have power over electric utilities for the following purposes:
>
> * * *
>
> (b) To prescribe a rate structure for all electric utilities.
>
> (c) To require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes.
>
> (d) To approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction. However, nothing in this chapter shall be construed to alter existing territorial agreements as between the parties to such

agreements.

(e) To resolve, upon petition of a utility or on its own motion, any territorial dispute involving service areas between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction. In resolving territorial disputes, the [C]ommission may consider, but not be limited to consideration of, the ability of the utilities to expand services within their own capabilities and the nature of the area involved, including population, the degree of urbanization of the area, its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services.

* * *

(5) The [C]ommission shall further have jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.

The Petition states that the Commission orders applicable to the jurisdictional question raised are:

Commission Order No. PSC-15-0101-DS-EM, issued February 12, 2015, in Docket No., 140142-EM, *In re: Petition for Declaratory Statement or Other Relief Regarding the Expiration of the Vero Beach Electric Service Franchise Agreement, by the Board of County Commissioners, Indian River County, Florida* (*Indian River County Order*); and

Commission Order No. PSC-11-0579-FOF-EI, issued December 16, 2011, in Docket No. 110001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor* (*2011 Fuel Clause Order*).

C. Description of how the Town of Indian River Shores is substantially affected

The Petition states that under its particular circumstances:

[T]here is a pressing question of whether Vero Beach can lawfully exercise extra-territorial powers within the Town's corporate limits without the Town's consent in the absence of general or special law giving Vero Beach such authority as required by the Florida Constitution.

Indian River Shores alleges that it has a right under the Florida Constitution to be protected from Vero Beach providing electric service within Indian River Shores without Indian River Shores' consent. The Petition maintains that this is a "threshold constitutional question" that must be decided before the Commission may address any issues concerning Vero Beach's Territorial

Orders, and that the Commission has no authority to address this constitutional issue. The Petition argues that the Florida Supreme Court has cautioned that, generally speaking, administrative agencies are not the appropriate forum in which to consider questions of constitutional import.

The Petition argues that the Commission's legal position taken in the Circuit Court Lawsuit that the Circuit Court lacked jurisdiction because the issues raised were within the sole and exclusive jurisdiction of the Commission appears to contradict the *Indian River County Order* and the *2011 Fuel Clause Order*. The Petition alleges that in the *Indian River County Order*, the Commission stated that it had no authority to address statutes granting local governmental home rule and police powers, or to address the powers of local governments under the Florida Constitution. The Petition further alleges that in the *2011 Fuel Clause Order*, the Commission stated that it has no authority under Chapter 366, F.S., to resolve constitutional issues.

The Petition argues that because of these contradictions and ambiguities, Indian River Shores is in doubt "regarding whether the PSC in fact has jurisdiction under Chapter 366 or any other applicable law to adjudicate and resolve the threshold constitutional questions raised by the Town." The Petition alleges that it needs to know where to go to adjudicate and enforce the rights and protections afforded to it by the Florida Constitution, and needs to know if the Commission has jurisdiction to adjudicate this constitutional issue before engaging in costly administrative proceedings. Indian River Shores states that it wants to promptly take any and all appropriate steps to assert and protect its municipal rights under the Florida Constitution. The Petition alleges that a declaration by the Commission would substantially affect Indian River Shores because it will allow Indian River Shores to plan its future conduct regarding where and how to enforce its constitutional rights. The Petition states that declaratory statements seeking clarification of the Commission's jurisdiction are an appropriate use of Section 120.565, F.S.

D. The declaratory statement requested

The Petition seeks a declaration that the Commission lacks the jurisdiction under Chapter 366, F.S., or any other applicable law, to interpret Article VIII, Section (2)(c) of the Florida Constitution, and Section 166.021, F.S., for purposes of adjudicating and resolving whether Indian River Shores has a constitutional right, codified in the statutes, to be protected from unconsented exercises of extra-territorial powers by Vero Beach within Indian River Shores' corporate limits.

II. Vero Beach's Response in Opposition to the Petition

A. Background

Vero Beach gives additional detail about the history of its providing electric service from the time of Vero Beach's inception through the present, including discussion of the Territorial Orders approving the territorial agreements between Vero Beach and FPL; the Franchise Agreement; communications between FPL and Vero Beach about negotiations for the sale of Vero Beach's utility facilities in Indian River Shores to FPL; the location of its transmission and distribution facilities in Indian River Shores; the Circuit Court Lawsuit; and the procedural background of the *Indian River County Order* and the Declaratory Statement issued on Vero Beach's Petition for Declaratory Statement in Docket No. 140244-EM, noting that Indian River

County's appeal of both orders to the Florida Supreme Court remains pending in *Board of Commissioners of Indian River County, Florida v. Graham*, consolidated Case Nos. 15-504 and 15-505.

Vero Beach states that it serves approximately 34,000 customer accounts, of which approximately 12,900 are located within Vero Beach city limits and approximately 3,000 are located within Indian River Shores. Vero Beach alleges that in reliance upon the Commission's Territorial Orders and other legal authority, it has provided safe and reliable electric service to all its customers for nearly 100 years, invested tens of millions of dollars, borrowed tens of millions of dollars, and entered into long-term power supply projects and related contracts involving hundreds of millions of dollars of long-term financial commitments.

B. Vero Beach's Legal Argument

Vero Beach argues that the Petition should be denied because the Circuit Court has decided the substantive and jurisdictional issues posed in the Petition. Vero Beach alleges that Indian River Shores asked the Circuit Court to rule on Indian River Shores' constitutional claim that Vero Beach did not have the power to provide electric service in Indian River Shores because of Section 166.021, F.S., and Article VIII, section 2(c), Fla. Const., because Vero Beach can only provide electric service outside its corporate limits pursuant to general or special law. Vero Beach argues that Indian River Shores fully argued its Section 166.021, F.S., and constitutional argument before the Circuit Court and that after being fully informed, the Circuit Court specifically rejected that argument, finding that "the actual relief sought by the Town amounts to an unfeasible request that the court determine what utility will provide electric service to the Town." Vero Beach argues that the Circuit Court has adjudicated Indian River Shores' constitutional claim by expressly recognizing that Vero Beach is providing service within Indian River Shores through the Commission's exercise of its jurisdiction under the general law established by the Legislature, Chapter 366, F.S., thus meeting the requirements of the Florida Constitution.

Vero Beach also argues that the Circuit Court has decided Indian River Shores' jurisdictional issue when it held that only the Commission could grant the "actual relief" that Indian River Shores wants by modifying the Territorial Orders that have been issued pursuant to general law. Vero Beach states that the Court did not suggest that Indian River Shores could or should seek resolution of its constitutional claim from the Commission through a petition for declaratory statement or any other form of pleading, and thus the Court's statement that Indian River Shores can seek relief before the Commission cannot be read as creating any basis for doubt as to where jurisdiction over Indian River Shores' constitutional claim lies. Vero Beach states that Indian River Shores' avenue for relief, if any is available, is to appeal the Court's Order of Dismissal pursuant to the Florida Rules of Appellate Procedure.

Vero Beach argues that the Petition does not meet the requirements of showing that there is an "actual present and practical need" for the requested declaratory statement and does not addresses a "present controversy," citing particularly to *Sutton v. Department of Environmental Protection,* 654 So. 2d 1047, 1048 (Fla. 5th DCA 1995). Vero Beach argues that if the Commission were to issue the Petition's requested declaratory statement to the effect that the Commission cannot adjudicate Indian River Shores' constitutional claim, Indian River Shores

would be in exactly the same position it is now, that is, with a binding Circuit Court order recognizing that the Commission has granted Vero Beach the right and obligation to provide electric service in the territorial area approved in the Territorial Orders through an exercise of the Commission's jurisdiction under the general law established by the Legislature. Vero Beach states that for this reason, there is no basis for doubt regarding Indian River Shores' rights or status. Accordingly, Vero Beach states that the Commission should deny or decline to issue the requested declaratory statement.

Vero Beach also argues that the Commission should deny the Petition because the substantive issue presented by the Petition is, in legal fact, the subject of pending judicial proceedings in the Circuit Court Lawsuit. Vero Beach alleges that although the Circuit Court has ruled on the issues raised in the Petition, Indian River Shores retains the right to file an appeal of the Circuit Court's Order of Dismissal at the appropriate time. Therefore, Vero Beach states, the proper avenue by which Indian River Shores should seek relief lies in an appeal of a final judgment from the Circuit Court Lawsuit, and the Commission should therefore deny the Petition.

Vero Beach states that as it relates to Indian River Shores' ability to seek relief from the Commission, the Court's Order of Dismissal applies only to Indian River Shores' ability to seek the "actual relief sought by the Town" and the Court's ability to decide the relief. Vero Beach alleges that the actual relief sought by Indian River Shores was an order from the Court stating that, after the Franchise Agreement expires, Vero Beach has no right to serve in Indian River Shores and Indian River Shores may thereafter choose its electric supplier. Vero Beach states that the Court found that this relief can only be granted by the Commission through a modification of the Territorial Orders.

Vero Beach argues that there is no reasonable basis for doubt as to whether the Commission has jurisdiction over Indian River Shores' constitutional claim. Vero Beach argues that the Circuit Court decided this constitutional claim when it recognized that the "PSC exercised its jurisdiction under the general law established by the Legislature when it issued the Territorial Orders granting the city the right and obligation to provide electric service in the territorial area approved in the Territorial Orders." Vero Beach argues that the Court's Order of Dismissal did not create any doubt as to the venue for jurisdiction over Indian River Shores' constitutional claim and that it did not suggest that Indian River Shores could or should seek resolution of its constitutional claim from the Commission. For this reason, Vero Beach alleges, the Court's statement that Indian River Shores can seek relief before the Commission cannot be read as creating any basis for doubt as to where jurisdiction over Indian River Shores' constitutional claim lies.

Vero Beach argues that the Commission's argument in the Circuit Court Lawsuit does not create doubt regarding the Commission's jurisdiction with respect to Indian River Shores' constitutional claims. Vero Beach argues that the Commission's argument addressed the Commission's jurisdiction with respect to the relief specifically requested by Indian River Shores in the Circuit Court Lawsuit, and further specifically recognized that the Commission will not interpret municipal powers and constitutional provisions.

Vero Beach further argues that the Petition does not meet the Section 120.565, F.S., requirements for a declaratory statement because it does not ask the Commission for a declaration as to Indian River Shores' status, rights, or obligations under the Commission's statutes, rules, or orders, but rather asks the Commission to affirm or confirm Indian River Shores' view of jurisdiction over its constitutional claim, which has already been decided by the Circuit Court. Vero Beach argues that, as in *Sutton,* Indian River Shores' rights and status, having been clearly stated by the Circuit Court, are not in doubt, and that if Indian River Shores wants the relief for which it asked the Court, it must seek the Commission's modification of the Territorial Orders, not a determination of its purported constitutional claim. Vero Beach states further that because Indian River Shores' constitutional claim has been addressed by the Circuit Court, as argued previously, there is no basis for Indian River Shores to be in doubt, and the Commission should deny the requested declaratory statement.

III. Indian River Shores' Reply

Indian River Shores argues that the Circuit Court dismissed its constitutional claim for lack of subject matter jurisdiction and not on the merits. Indian River Shores argues that Florida law makes clear that a dismissal for lack of jurisdiction is not an adjudication on the merits. Indian River Shores points to the Court's Order of Dismissal that states:

> [a]lthough this Court is without jurisdiction to decide the relief requested in Count I, the Town may seek relief before the Commission and, if unsuccessful there, by direct appeal to the Florida Supreme Court.

Indian River Shores also states that Vero Beach's motion to dismiss was based only on grounds that the Circuit Court lacked jurisdiction because the Commission has exclusive and superior jurisdiction; the Commission has primary jurisdiction over the subject matter; and Indian River Shores failed to exhaust its administrative remedies by not going to the Commission first.

Indian River Shores argues that at hearing before the Circuit Court, Commission counsel stated that the Office of General Counsel would recommend to the Commission that a declaratory statement be issued if Indian River Shores were to ask the Commission the same questions it asked the Court. Indian River Shores acknowledges, however, that it has not brought those questions to the Commission, and, instead, is asking only that the Commission issue a declaration on the Commission's jurisdiction to adjudicate Indian River Shores' constitutional rights. Staff notes that because the merits of the questions before the Circuit Court - whether, upon expiration of the Franchise Agreement, Indian River Shores can choose an electric provider and Vero Beach has no right to provide service in Indian River Shores - are not before the Commission, the parties' arguments on the merits of these questions (Petition, pp. 8-10; Vero Beach's Response, pp. 39-40; Indian River Shores' Reply, pp.7-9) are irrelevant to the Petition and are not discussed.

Indian River Shores restates its position that there needs to be an adjudication on its threshold constitutional argument of whether has a constitutional right to be protected from unconsented exercises of extra-territorial power by Vero Beach. Indian River Shores argues that after that decision is made "[i]n an appropriate proceeding, the PSC will need to consider that the

Legislature has not granted Vero Beach extra-territorial power to serve within the boundaries of the Town just as the PSC did for [Reedy Creek Improvement District]."

Indian River Shores also argues that its requested declaratory statement would not improperly interfere with or preempt legal issues in a pending judicial proceeding. Indian River Shores argues that a party whose claim is dismissed with prejudice is not barred from seeking relief as to the claim dismissed on jurisdictional grounds in a separate cause or court having jurisdiction. Indian River Shores points out that the Circuit Court advised that it could seek relief from the Commission.

Indian River Shores argues that Vero Beach's reliance on *Padilla v. Liberty Mutual Insurance Company*, 832 So. 2d 916 (Fla. 1st DCA 2002), is misplaced. Indian River Shores argues that it is not attempting to obtain administrative preemption over legal issues pending in a court proceeding because the Circuit Court has already ruled that it does not have jurisdiction. Indian River Shores states that Vero Beach is correct that Indian River Shores retains an appellate right to appeal the Court's Order of Dismissal, but even if that could be considered a "pending issue," Vero Beach expressly argued in the Circuit Court that the Commission must be allowed to declare its own jurisdiction, and that is what the Petition is requesting.

Finally, Indian River Shores argues that Vero Beach's opposition should be rejected because it improperly injects other issues and alleged factual omissions that contradict Rule 25-22.039, F.A.C., that requires that intervenors take the case as they find it. Indian River Shores states that the Petition is limited to Indian River Shores' particular circumstances as set forth in the Petition, not as to Vero Beach's circumstances. Indian River Shores alleges that Vero Beach's Response admits that the Commission does not have jurisdiction to rule on constitutional claims. Indian River Shores further argues that Vero Beach's Response and motion to intervene fail to clearly articulate Vero Beach's substantial interest in the narrow jurisdictional question presented by Indian River Shores and that Vero Beach has nothing to add to this proceeding since there are no disputed facts involved.

IV. Staff's Analysis and Recommendation

A. The Circuit Court Lawsuit

Indian River Shores' Amended Complaint in the Circuit Court Lawsuit asked the Court to:

> Declare that upon expiration of the Franchise Agreement the Town has the right to determine how electric service should be provided to its inhabitants, which includes either through direct provision of service or by contracting with other utility providers of its choosing; and
>
> Declare that upon expiration of the Franchise Agreement the City has no legal right to provide extra-territorial electric service to customers residing within the corporate limits of the Town.

(Attachment A, p. 25). In support of these requested declarations, Indian River Shores argued to the Circuit Court that Article VIII, Section 2(c), Florida Constitution, and Sections 166.021(3)(a)

and 180.02(2), F.S., require that Vero Beach must have authority provided by general or special law in order to provide electric service in Indian River Shores, and that the Commission's Territorial Orders do not grant this authority. Indian River Shores also argued that if the Circuit Court were to rule in its favor, the Commission's Territorial Orders granting Vero Beach the right and obligation to provide service within Indian River Shores should "simply be conformed to the Court's order."

Vero Beach moved to dismiss Indian River Shores' request for the Circuit Court to declare that upon expiration of the Franchise Agreement, Vero Beach no longer has a right to provide service within the corporate limits of Indian River Shores and that Indian River Shores has the right to determine its service provide. Vero Beach argued that the Circuit Court lacks jurisdiction and the Commission has sole jurisdiction to decide these questions. The Commission, participating as amicus curiae, supported Vero Beach's motion to dismiss, arguing that the Commission has sole and exclusive jurisdiction to decides these questions. The Court granted the motion to dismiss, finding, in part:

> The City currently provides electric service to a significant portion of the Town that is within the service area described in the City's territorial agreement with Florida Power & Light ("FPL"). The territorial agreement, including subsequent amendments thereto, has been approved by the Commission in a series of Territorial Orders [footnote omitted] pursuant to its statutory authority. *See* § 366.04(2)(d), Fla. Stat. Territorial agreements merge with and become part of the Commission's orders approving them. *Public Service Com'n v, Fuller*, 551 So. 2d 1210, 1212 (Fla. 1989). Accordingly, the PSC exercised its jurisdiction under the general law established by the Legislature when it issued the Territorial Orders granting the City the right and obligation to provide electric service in the territorial area approved in the Territorial Orders.
>
> * * *
>
> Any modification or termination of a Commission-approved territorial order must first be made by the Commission pursuant to its exclusive jurisdiction. *Fuller* at 1212. Thus, the City retains its right and obligation to provide electric service within the territory described in the Territorial Orders unless and until the Territorial Orders are modified or terminated by the Commission.
>
> The Town contends that it is not – as the City argues – collaterally attacking the PSC's exclusive and superior jurisdiction and lawful Territorial Orders issued in the exercise of its jurisdiction. Rather, it is the Town's position that it has a right to be protected from the City's exercise of extra-territorial power within the Town after expiration of the Franchise Agreement, but that the Town is uncertain of such rights under the terms of the Franchise Agreement, the Florida Constitution, the Municipal Home Rule Powers Act and section 180.02(2), Florida Statutes, after expiration of the Franchise Agreement. [fn. 4 omitted] The Town maintains that only the court has the authority to address these threshold contractual, constitutional, and statutory issues because the PSC's authority is

> limited to issuing declarations interpreting the rules, order and statutory provisions of the Commission. . . .
>
> Although artfully argued otherwise, the actual relief sought by the Town amounts to an unfeasible request that the court determine what utility will provide electric service to the Town. This determination has already been made by the PSC in the Territorial Orders. *See Fuller* at 1210-1213 (the circuit court has no jurisdiction to modify or invalidate a territorial agreements approved by the PSC in the exercise of its exclusive jurisdiction).
>
> The relief requested by the Town is squarely within the jurisdiction of the PSC. First, pursuant to the PSC's statutory authority under section 366.04(2)(d) and (e), Florida Statutes, to approve and modify territorial agreements through its territorial orders and second, pursuant to section 366.04(1), Florida Statutes, providing the PSC with jurisdiction exclusive and superior to that of the Town, and directing that the orders of the Commission shall prevail in the event of conflict. *See Fuller* at 1212.
>
> Accordingly, the court finds that it is without subject matter jurisdiction to grant the relief requested and that Count I should be dismissed with prejudice. Although this Court is without jurisdiction to decide the relief requested in Count I, the Town may seek relief before the Commission and, if unsuccessful there, by direct appeal to the Florida Supreme Court. *Reynolds* at 80-81; *Bryson* at 1255.

(Attachment B, pp. 27-31)

In response to the Petition, Vero Beach argues that the Circuit Court reached the merits whether Vero Beach has authority to provide electric service upon expiration of the Franchise Agreement. Staff disagrees with Vero Beach's argument. The Court's Order of Dismissal, although deciding the issue of subject matter jurisdiction on the merits, did not make a ruling on the merits of the requested declarations. Dismissal of a case for lack of subject matter jurisdiction does not decide the actual substantive issues raised. *See, e.g., Neapolitan Enters., LLC v. City of Naples*, 2016 Fla. App. LEXIS 1183 (Fla. 2d DCA 2016)(citing to Fla. R. Civ. P. 1.420(b)).

The Circuit Court's finding that Indian River Shores may "seek relief before the Commission" referred to Indian River Shores' request for declarations that upon expiration of the Franchise Agreement (1) Indian River Shores has the right to determine how electric service should be provided to its inhabitants and (2) Vero Beach has no legal right to provide electric service in Indian River Shores. The Circuit Court recognized that these questions are under the Commission's jurisdiction to decide if brought to the Commission in a future, appropriate proceeding. However, the Petition does not ask these questions.

The Circuit Court did not invite Indian River Shores to relitigate at the Commission the Court's Order of Dismissal for lack of subject matter jurisdiction. But the Petition does just that. The Petition asks the Commission to conclude that a threshold constitutional issue exists that the Commission does not have jurisdiction to decide and that the Circuit Court must hear this

argument before the Commission may address a territorial dispute concerning Vero Beach's authority to provide electric service in Indian River Shores. The Court's Order of Dismissal rejected this argument.

B. The Petition's allegations of doubt are sufficient to meet the requirements for issuance of a declaratory statement

The Petition asks the Commission to declare:

> [T]he PSC lacks the jurisdiction under Chapter 366, Florida Statutes, or any other applicable law, to interpret Article VIII, Section 2(c) of the Florida Constitution, and Section 166.021, Florida Statutes, for purposes of adjudicating and resolving whether the Town has a constitutional right, codified in the statutes, to be protected from unconsented exercises of extra-territorial powers by Vero Beach within the Town's corporate limits.

Section 166.021(3)(a), F.S., provides that pursuant to the Florida Constitution, each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, but not including the subject of "exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution." Article VIII, Section 2(c), states that exercise of extra-territorial powers by municipalities shall be as provided by general or special law.

Indian River Shores' requested declaration must be read in conjunction with the particular circumstances and substantial interests alleged by Indian River Shores, as required by subsections 120.565(1) and (2), F.S., and Rules 28-105.001 and 28-105.002, F.A.C. Based on the facts set forth in the Petition, "extra-territorial powers" in the context of Indian River Shores' question means Vero Beach's authority to provide electric service within Indian River Shores' corporate limits. Indian River Shores filed the Petition as part of its overall position that when the Franchise Agreement expires on November 6, 2016, Vero Beach will no longer have the authority to provide electric service in Indian River Shores and Indian River Shores will have the authority to choose a new service provider. Indian River Shores' legal theory for this position is that without Indian River Shores' consent, Vero Beach is not authorized by the Territorial Orders or any general or special law to provide electric service in Indian River Shores as is required by Section 166.021, F.S., and the Florida Constitution.

The essential question raised by the Petition, whether Vero Beach has the right and obligation to continue to provide electric service within Indian River Shores upon expiration of the Franchise Agreement, is within the sole, exclusive jurisdiction of the Commission to answer in approving territorial orders or resolving territorial disputes pursuant to Section 366.04, F.S. Pursuant to Section 366.04(2), F.S., the Commission has the power to approve territorial agreements between municipal electric utilities, and to resolve any territorial dispute between municipal electric utilities and other electric utilities under the Commission's jurisdiction. Section 366.04(5), F.S., gives the Commission jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities. Section

366.04(1), F.S., states that the jurisdiction conferred upon the Commission shall be exclusive and superior to that of all other political subdivisions, including municipalities, and, in case of conflict therewith, all lawful acts and orders of the Commission shall in each instance prevail.

Consistent with Section 366.04, F.S., the Circuit Court appropriately found that it did not have jurisdiction to address Indian River Shores' constitutional argument because Indian River Shores' requested relief amounted to "an unfeasible request that the court determine what utility will provide electric service to the Town" and that the "relief requested by the Town is squarely within the jurisdiction of the PSC." The Circuit Court appropriately rejected Indian River Shores' argument that there is a threshold constitutional issue requiring Circuit Court resolution. However, Indian River Shores' Petition questions the Circuit Court's ruling.

To the extent that the Petition is asking the Commission to determine whether there is a threshold constitutional issue for the Circuit Court to decide, it appears that there is no actual present and practical need for a declaratory statement because the Circuit Court has already decided there is not a threshold constitutional issue. *See Sutton*, 654 So. 2d at 1048 (affirming DEP's dismissal of a petition for declaratory statement because petitioner's rights, status, or other equitable or legal relations were not in doubt since petitioner was given the relief requested through the administrative hearing process). Further, to the extent the Petition is asking the Commission to evaluate the correctness of the Circuit Court's decision that the Commission, not the Circuit Court, has sole jurisdiction to address the constitutional argument raised, the Petition amounts to a request for an advisory opinion. There is no doubt concerning the Circuit Court's decision that it lacks jurisdiction. To the extent that the Petition is in any manner relitigating the questions addressed in the Court's Order of Dismissal, Vero Beach and Indian River Shores agree that Indian River Shores' remedy for challenging the Circuit Court's Order of Dismissal is an appeal to the Third District Court of Appeal. *See Garcia*, 99 So. 3d at 544 (disapproving use of a declaratory action as an "end run" around the Florida Rules of Appellate Procedure).

Subject matter jurisdiction was fully and fairly litigated by the parties before the Circuit Court. The Court's determination on the issue of jurisdiction was a critical and necessary part of resolution since it meant the Circuit Court was without jurisdiction to proceed on the merits of Indian River Shores' requested declarations. Under these circumstances, collateral estoppel acts as a bar to Indian River Shores from relitigating the issue of the Circuit Court's subject matter jurisdiction. *See Marquardt v. State*, 145 So. 3d 464, 481 (Fla. 2015)(identifying the elements of collateral estoppel); and *North Georgia Elec. Membership Corp. v. City of Calhoun*, 989 F.2d 429 (11th Cir. 1993)(stating that dismissal of a complaint for lack of jurisdiction adjudicates the court's jurisdiction and bars relitigation of the jurisdictional question).

The Commission has recognized that collateral estoppel may apply in its proceedings. *See* Order Denying Request for Formal Hearing and Request for Deferral etc., issued March 11, 1996, Order No. PSC-96-0350-FOF-WS, Docket No. 921098-WS, *In re: Applications for certificates by Turkey Creek Utilities* (where, in denying a request for deferral, the Commission found that the defenses of collateral estoppel and res judicata appeared applicable because the same question had already been ruled upon by the Commission and affirmed by the First District Court of Appeal). *See also Zimmerman v. Office of Insurance Regulation*, 944 So. 2d 1163, 1166-69 (Fla. 4th DCA 2006)(holding that the appellate court's ruling on appeal from the circuit court

collaterally estopped petitioner from relitigating the same arguments involving the same parties at the administrative agency).

Indian River Shores, however, alleges that it is in doubt as to where to bring its constitutional argument because it perceives conflict between the Court's Order of Dismissal and the Commission's decisions in *Indian River County Order* and the *2011 Fuel Clause Order* that the Petition alleges stand for the proposition that the Commission has no jurisdiction to decide constitutional issues. The purpose of a declaratory statement is to resolve ambiguities of law as applied to a petitioner's specific circumstances. *Investment Corp.*, 747 So. 2d at 382.

In *Citizens v. Fla. PSC*, 164 So. 3d 58, 64 (Fla. 1st DCA 2015), the Court held that where contradictory orders of an agency make applicability of statutes or rules an administrative agency enforces uncertain as to particular circumstances, a declaratory statement may well be appropriate for clarification of the petitioner's rights, duties, and privileges. In *Citizens v. Fla. PSC*, the Court found that the Office of Public Counsel was entitled to a declaratory statement because it had alleged that its discovery rights acknowledged by the Commission in past cases had "arguably" been terminated or restricted by a later order, and thus that its discovery rights were subject to doubt and uncertainty. Similarly, although not alleging conflict between Commission orders, the Petition is alleging that the Commission in *Town of Indian River Shores* took a legal position concerning its ability to interpret statutory and constitutional provisions in a declaratory statement that conflicts with two prior Commission orders. Staff believes that under *Citizens v. Fla. PSC*, the Petition's allegations are sufficient to meet the requirements for issuance of a declaratory statement for purposes of giving the Commission's opinion explaining why the Court's Order of Dismissal does not conflict with the *Indian River County Order* and the *2011 Fuel Clause Order.*

Indian River Shores' argument that there is a threshold constitutional issue that must be determined by the Circuit Court is based on caselaw that stands for the proposition that an administrative agency does not have the authority to determine whether a statute or rule is unconstitutional, based on the separation of powers provision of Article II, Section 3 of the Florida Constitution. Staff agrees with these cases. However, the Petition is not challenging the constitutionality of a statute, rule, or Commission action. For this reason, the Petition's arguments and citation to *Gulf Pines Memorial Park v. Oaklawn Memorial Park*, 361 So. 2d 695 (Fla. 1978), and *Department of Revenue v. Young American Builders*, 330 So. 2d 864 (Fla. 1st DCA 1976), are not on point. Indian River Shores' framing of its argument as a "constitutional issue" is insufficient in and of itself to divest the Commission of jurisdiction under Section 366.04, F.S., to determine questions concerning territorial agreements and territorial orders. The mere assertion of constitutional questions does not automatically entitle a party to bypass administrative channels. *Gulf Pines,* 361 So. 2d at 699.

There is no separation of powers prohibition against the Commission, in a proper proceeding, interpreting the phrase "as provided by general or special law," as used in Article VIII, Section 2(c), Fla. Const., for the purpose of determining whether Vero Beach has authority to continue to provide electric service within Indian River Shores upon expiration of the Franchise Agreement. *See Communications Workers, Local 3170 v. City of Gainesville*, 697 So. 2d 167, 170 (Fla. 1st DCA 1997)(stating that administrative law judges and PERC Commissioners not purporting to

invalidate legislative enactments do not usurp judicial prerogatives by deciding – in the first instance - the constitutional issues that arise in cases properly before them); Order No. PSC-99-0535-FOF-EM, 1999 Fla. PUC LEXIS 534 *48, issued March 22, 1999, Docket No. 981042-EM, *In re: Joint petition for determination of need by City of New Smyrna Beach et al.* (where the Commission found that a challenge to the constitutionality of interpreting Section 403.519, F.S., "clearly falls squarely within our administrative expertise.") In this regard, *Myers v. Hawkins*, 362 So. 2d 926, 929 (Fla. 1978), cited in the Petition, does not support Indian River Shores' argument because in that case the Florida Supreme Court acknowledged the Florida Commission on Ethics' authority to interpret the term "judicial forum" in the Florida Constitution.

There would also be no prohibition against the Commission interpreting the language of Section 166.021, F.S., in a proper proceeding concerning the Territorial Orders between Vero Beach and FPL. The Commission, under its Section 366.04, F.S., jurisdiction over territorial agreements, has properly and necessarily interpreted in a Section 120.569 and 120.57, F.S., proceeding, statutory provisions that are not under its authority to enforce or implement. In resolving territorial disputes involving electric cooperatives, the Commission has interpreted Chapter 425, F.S., the Rural Electric Cooperative Law. *See Choctawhatchee Elec. Coop. v. Graham*, 132 So. 3d 208, 211, n. 1 (Fla. 2014); *Escambia River Elec. Coop. v. Fla. Public Serv. Com.*, 421 So. 2d 1384 (Fla. 1982)(where the Commission interpreted Section 425.04, F.S., in resolving the territorial dispute); and *Gainesville-Alachua County Regional Electric, Water & Sewer Utilities Board v. Clay Electric Cooperative, Inc.*, 340 So. 2d 1159 (Fla. 1976)(where the Commission's order on appeal interpreted the definition of "rural area" under Section 425.03(1), F.S.). The Commission's interpretation of the phrase "general or special law" as used in Section 166.021, F.S., and the Florida Constitution, in the context of a territorial dispute or question involving a municipality, would be analogous to the Commission's interpretation of the definition of "rural area" under Chapter 425, F.S., in a territorial dispute involving an electric cooperative.

The law as applied in the Court's Order of Dismissal does not conflict with the *2011 Fuel Clause Order*. The Commission's support of the motion to dismiss for lack of jurisdiction in the Circuit Court Lawsuit is consistent with the *2011 Fuel Clause Order*. The issue in the Circuit Court Lawsuit was whether the Circuit Court or the Commission had jurisdiction to answer the questions raised to the Court. The issue raised in the *2011 Fuel Clause Order* did not involve the issue of circuit court jurisdiction over constitutional questions. In the *2011 Fuel Clause Order*, the consumer intervenors argued that allowance of recovery of certain fuel costs violated the Florida Constitution by taking consumers' property without due process of law. Even though this constitutional question could not be addressed by the Commission, the docket was, nonetheless, heard by the Commission, with the Commission recognizing the intervenors' ability to raise their constitutional issue on appeal. In a proceeding concerning Vero Beach's Territorial Orders, the Commission would not need to reach any questions of Indian River Shores' constitutional rights in order to make a decision and issue a final order. As the Commission stated in the *2011 Fuel Clause Order:*

> Consumer Intervenors have been given the opportunity, in this docket, to prepare a record upon which the Supreme Court can consider the constitutional issues *de novo*. [citation omitted] Thus in accordance with *Key Have*n and the cited cases,

> we decline to determine the constitutional issues raised by the Consumer Intervenors. The issue of whether we can allow recovery of fuel costs, subject to refund, prior to a determination of prudence, can be resolved without resorting to a determination of the constitutional claims.

An adversely affected party can raise its constitutional issues on appeal, having had the opportunity to provide support for its position on the record of the agency proceeding. *See Key Haven Associated Enterprises. v. Board of Trustees*, 427 So. 2d 153, 157-58 (Fla. 1983)(finding that the aggrieved party could complete the administrative process and then challenge the statute's facial constitutionality in the district court of appeal); *Florida Hospital Adventist Health v. Agency of Health Case Administration*, 823 So. 2d 844 (Fla. 1st DCA 2002)(holding that a person appealing an agency order could raise for first time on appeal the issue that the agency's statutory interpretation was unconstitutional as applied); and *Rice v. Department of Health & Rehabilitative Services*, 386 So. 2d 844, 848-50 (Fla. 1st DCA 1980)(where the Court remanded the case to the agency to conduct a Section 120.57, F.S., hearing in order for there to be the necessary record to allow the appellate court to resolve the claim of statutory unconstitutionality). Both the Court's Order of Dismissal and the *2011 Fuel Clause Order* are consistent with the requirement of exhaustion of administrative remedies. *Key Haven*, 427 So. 2d at 158.

Likewise, the Court's Order of Dismissal does not conflict with the *Indian River County Order*. The context in which the Commission declined to interpret Chapter 125, F.S., and Florida constitutional provisions in the *Indian River County Order* was a Section 120.565, F.S., declaratory statement proceeding where Indian River County (County) raised 16 declaratory statement questions. Based on the parameters for the issuance of declaratory statements found in Section 120.565, F.S., and Chapter 25-28.105, F.A.C., the Commission found the Petition was not proper for a declaratory statement because the questions posed were hypothetical, did not present a present ascertained set of facts, were based on an incorrect legal conclusion, asked for a declaration determining the conduct of third parties, and that questions concerning the County's rights-of-way and interpretation of the County's franchise agreement with Vero Beach were not subject to the Commission's jurisdiction. The Commission did not decide the *Indian River County Order* on the basis that a "threshold constitutional issue" existed that had to be decided by a circuit court before the Commission could address whether Vero Beach had the right to continue to provide electric service in the County upon expiration of the franchise agreement between Vero Beach and Indian River County.

Even though Indian River Shores frames its argument as a constitutional question, the actual relief it seeks is a determination of what utility will provide electric service to Indian River Shores customers upon expiration of the Franchise Agreement. Who is authorized to provide electric service to Indian River Shores has been determined in the Territorial Orders. Any modification to the Territorial Orders is within the Commission's exclusive and superior jurisdiction. If a proceeding were held before the Commission on a territorial dispute and Indian River Shores was an adversely affected party, it could raise its constitutional rights arguments on appeal to the Florida Supreme Court. This statement, however, should in no way be construed as a predetermination that Indian River Shores would meet the requirements of Chapter 120, F.S.,

and Chapter 366, F.S., entitling it to a hearing before the Commission or an appeal of a Commission final order to the appellate court.

V. Conclusion

The Petition asks that the Commission make the following declaration:

> The Commission lacks the jurisdiction under Chapter 366, F.S., or any other applicable law, to interpret Article VIII, Section (2)(c) of the Florida Constitution, and Section 166.021, F.S., for purposes of adjudicating and resolving whether the Town has a constitutional right, codified in the statutes, to be protected from unconsented exercises of extra-territorial powers by Vero Beach within the Town's corporate limits.

For the reasons set forth above, staff recommends the Commission should issue a declaratory statement on the Town of Indian River Shores' Petition for Declaratory Statement. However, the Commission should not issue the declaratory statement requested by the Petition. Instead, the Commission should declare that the Commission has the jurisdiction under Section 366.04, F.S., to determine whether Vero Beach has the authority to continue to provide electric service within the corporate limits of the Town of Indian River Shores upon expiration of the franchise agreement between the Town of Indian River Shores and the City of Vero Beach. The Commission should state that the declaratory statement will be controlling only as to the facts relied upon in this docket and not as to other, different or additional facts.

Issue 2: Should this docket be closed?

Recommendation: Yes, the docket should be closed (Cowdery)

Staff Analysis: Whether the Commission grants or denies the Town's Petition, in whole, or in part, a final order must be issued by April 4, 2016. Upon issuance of the final order, no further action will be necessary, and the docket should be closed.

Filing # 27415858 E-Filed 05/18/2015 03:15:12 PM

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER COUNTY, FLORIDA

TOWN OF INDIAN RIVER SHORES,
a Florida municipality,

Plaintiff,

v.

CITY OF VERO BEACH, a Florida municipality,

Defendant.

CASE NO.: 2014-CA-000748

AMENDED COMPLAINT

Plaintiff, TOWN OF INDIAN RIVER SHORES ("Plaintiff" or "Town"), by and through its undersigned attorneys, sues Defendant, CITY OF VERO BEACH ("Defendant" or "City").

JURISDICTION AND VENUE

1. This is an action for declaratory and supplemental relief as well as damages based on a rare situation in which one municipality -- the City -- seeks to exert extra-territorial monopoly powers and extract monopoly profits within the corporate limits of another municipality -- the Town -- without the Town's consent.

2. This is an action for declaratory and supplemental relief, involving an amount in controversy in excess of $15,000, over which this Court has jurisdiction pursuant to Section 26.012(2)(a) and (c) and Chapter 86, Florida Statutes.

3. This is also an action for damages in excess of $15,000 over which this Court has jurisdiction pursuant to Section 26.012(2)(a), Florida Statutes.

Exhibit "A"

COUNT I

For Declaratory Relief that Upon the Imminent Expiration of the Franchise Agreement the City Does Not Have the Legal Right to Provide Electric Service Within the Town, and that the Town Has the Right to Decide How Electric Service is to be Furnished to Its Inhabitants

41. This count is an action for declaratory relief by the Town against the City regarding the Town's rights and obligations under its Home Rule Powers, under the special act creating the Town, and under the Franchise Agreement.

42. The Town adopts paragraphs 1 through 40 as if set forth fully herein.

43. The City has no inherent Home Rule power to provide extra-territorial electric service within the municipal boundaries of the Town.

44. In order for the Town to exercise extra-territorial powers and provide electric service within the corporate limits of the Town, such extra-territorial powers must have been clearly granted to the City by a general or special law passed by the Florida Legislature.

45. Nothing in the City Charter or in any current general or special law grants the City the power to provide extra-territorial electric service within the Town.

46. The City's power to provide extra-territorial electric utility service within the Town is derived directly from the Town's contractual agreement reflected in the Franchise Agreement.

47. The City acknowledges in its Ordinances that "the Town of Indian River Shores receives utility services from the City of Vero Beach under a franchise." City of Vero Beach, Fla. Code § 2.102.

48. The Franchise Agreement provides the permission under which the City is currently providing extra-territorial electric service in the Town. However, the City will no longer have that permission when its Franchise expires on November 6, 2016.

49. Under Florida law a Franchise is a privilege, not a right, and the City has no right to continue furnishing extra-territorial electric service to the Town's inhabitants after the Franchise Agreement expires unless the Town otherwise grants the City such permission.

50. Although the City has entered into a bi-lateral territorial agreement with FPL that currently envisions that the City will provide electric service to a portion of the Town, and the PSC has approved that territorial agreement pursuant to that agency's regulatory authority under Chapter 366, Florida Statutes, the PSC's administrative order approving the territorial agreement between the City and FPL is not a general or special law passed by the Legislature that grants the City the extra-territorial power to provide extra-territorial electric service within the corporate limits of the Town.

51. Assuming arguendo that the City somehow has been given the power by a current general or special law to provide extra-territorial electric service, it cannot do so in a manner that will encroach on the municipal authority of the Town. As a municipality , the Town has retained the right to provide electric services within its corporate limits as those limits existed on July 1, 1974 without competition. In addition, as a municipality, the Town has retained the authority to decide which electric utilities, if any, may possess a franchise for providing such services.

52. Thus, nothing in the territorial agreement or the PSC approval thereof impedes the prosecution of this Amended Complaint wherein the Town seeks a judgment enforcing the Town's express powers to provide its inhabitants with electric service and deny another municipality permission to furnish extra-territorial electric service within the Town at the expiration of a freely bargained-for franchise agreement.

53. The Town is not seeking to challenge the PSC's authority under Section 366.04, Florida Statutes, to coordinate the statewide electric grid through its consideration and approval of

territorial agreements. Rather, upon the Court's declaration that the City does not have the statutory powers to provide extra-territorial electric service within the Town without the Town's consent and that the Town has the right to decide how electric service is to be furnished to its inhabitants, the PSC's order approving the territorial agreement should simply be conformed to the Court's order. This would be consistent with the territorial agreement which expressly acknowledges the service area boundaries described therein may be terminated or modified by a court of law.

54. The Town has elected not to renew the Franchise Agreement with the City because the City continues to mismanage its electric utility and to charge the Town and its citizens unreasonable and oppressive electric rates.

55. Pursuant to its Home Rule and express statutory powers, the Town has the legal right to decide how electric service should be furnished to its inhabitants when the Franchise Agreement expires on November 6, 2016.

56. There is nothing in the Franchise Agreement or in the Special Act creating the Town that prohibits or in any way restricts the Town's right to furnish electricity itself or by contract with another utility once the Franchise Agreement expires. Quite the opposite, the Town's Special Act gives it the express authority, and the responsibility, to determine how electric service should be provided to its inhabitants, whether by providing the electricity itself or by contracting with another utility to do so.

57. The City has indicated that it will not cease providing electricity to the Town or allow the Town to furnish its own electric service or contract with other utilities for such electric service when the City's Franchise expires.

58. The Town needs to act now to ensure that the Town is able to exercise its statutory authority to determine how electric service will be provided to its inhabitants when the Franchise Agreement expires and that it does so in an orderly and efficient manner so that electric utility service, other than from the City, will be available to serve the Town and its citizens when the City's Franchise expires. Therefore, the Town needs the requested declaratory relief in advance of the Franchise Agreement's actual expiration in order to provide a sufficient transition period and protect its citizens from service interruptions.

59. Thus, there exists a present, actual, and justifiable controversy between Town and the City, requiring a declaration of rights, not merely the giving of legal advice.

WHEREFORE, the Town requests this Court:

(1) Declare that upon expiration of the Franchise Agreement the Town has the right to determine how electric service should be provided to its inhabitants, which includes either through direct provision of service or by contracting with other utility providers of its choosing;

(2) Declare that upon expiration of the Franchise Agreement the City has no legal right to provide extra-territorial electric service to customers residing within the corporate limits of the Town; and

(3) Grant the Town such other and further relief as the Court deems proper under the circumstances.

COUNT II

For Anticipatory Breach of Contract

60. This count is an action by the Town seeking damages in excess of $15,000 from the City for anticipatory breach of contract.

Filing # 34345467 E-Filed 11/11/2015 06:05:00 PM

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER COUNTY, FLORIDA

TOWN OF INDIAN RIVER SHORES,
a Florida municipality,

Plaintiffs,

v.

CITY OF VERO BEACH,
a Florida municipality,

Defendant.
_____/

CASE NO. 312014CA000748

ORDER GRANTING IN PART AND DENYING IN PART CITY OF VERO BEACH'S MOTION TO DISMISS AMENDED COMPLAINT

THIS CAUSE came before the Court for hearing on August 26, 2015 on The City of Vero Beach's motion to dismiss amended complaint, and the Court, having considered the motion, the plaintiff's response thereto, and comments of the General Counsel for the Florida Public Service Commission,[1] heard argument of counsel, and being otherwise duly advised in the premises, finds and decides as follows:

On May 18, 2015, plaintiff Town of Indian River Shores (the "Town") filed an amended complaint against the City of Vero Beach (the "City") which included four separate causes of action, all of which the City now moves to dismiss. The primary purpose of a motion to dismiss is to request the trial court to determine whether the complaint properly states a cause of action upon which relief can be granted and, if it does not, to enter an order of dismissal. *Provence v. Palm Beach Taverns, Inc.*, 676 So.

[1] The Florida Public Service Commission participated as an amicus curiae in this matter.

2d 1022 (Fla. 4th DCA 1996). "In order to state a cause of action, a complaint must allege sufficient ultimate facts to show that the pleader is entitled to relief. A court may not go beyond the four corners of the complaint and must accept the facts alleged therein and exhibits attached as true. All reasonable inferences must be drawn in favor of the pleader." *Taylor v. City of Riviera Beach,* 801 So.2d 259, 262 (Fla. 4th DCA 2001) (citations omitted). "Whether the allegations of the complaint are sufficient to state a cause of action is a question of law." *Della Ratta v. Della Ratta*, 927 So. 2d 1055, 1058 (Fla. 4th DCA 2006).

Count I for Declaratory Relief that Upon the Imminent Expiration of the Franchise Agreement the City Does Not Have the Legal Right to Provide Electric Service Within the Town, and that the Town Has the Right to Decide How Electric Service Is to Be Furnished to Its Inhabitants. The City contends that Count I should be dismissed because the declaratory relief requested lies within the exclusive and superior jurisdiction of the Florida Public Service Commission (the "Commission" or "PSC"), and therefore this Court is without subject matter jurisdiction to decide the matter. Accordingly, the issue to be decided in Count I is not whether the Town will succeed in obtaining the specific relief it seeks but whether this court has jurisdiction to grant the relief requested by the Town.

In 1974, the Florida Legislature enacted the Grid Bill[2] which gave the PSC jurisdiction over municipally-owned utilities for the first time. The Grid Bill also clarified and codified in Chapter 366 of the Florida Statutes the PSC's jurisdiction to define and control the service areas of electric utilities in Florida. Pursuant to section 366.04(2),

[2] Ch. 74-196, § 1, Laws of Florida.

Florida Statutes, the PSC has power over electric utilities to approve territorial agreements between and among municipal electric utilities and other electric utilities under its jurisdiction and to resolve territorial disputes. § 366.04(2)(d) and (e), Fla. Stat. Additionally, pursuant to Section 366.04(5), the PSC has jurisdiction over "the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities." Section 366.04(1), provides that the jurisdiction conferred by the Legislature upon the PSC "shall be exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and, in case of conflict therewith, all lawful acts, orders, rules, and regulations of the [C]ommission shall in each instance prevail."

The City currently provides electric service to a significant portion of the Town that is within the service area described in the City's territorial agreement with Florida Power & Light ("FPL"). The territorial agreement, including subsequent amendments thereto, has been approved by the Commission in a series of Territorial Orders[3] pursuant to its statutory authority. *See* § 366.04(2)(d), Fla. Stat. Territorial agreements merge with and become part of the Commission's orders approving them. *Public Service Com'n v. Fuller*, 551 So. 2d 1210, 1212 (Fla. 1989). Accordingly, the PSC exercised its jurisdiction under the general law established by the Legislature when it issued the Territorial Orders

[3] Copies of the PSC's Territorial Orders are attached to the City's motion to dismiss as Composite Exhibit "E."

granting the City the right and obligation to provide electric service in the territorial area approved in the Territorial Orders.

The PSC has the authority to approve and enforce territorial agreements so that it may carry out its express statutory purpose of avoiding the uneconomical duplication of facilities and its duty to consider the impact of such decisions on the planning, development, and maintenance of a coordinated electric power grid in Florida. *Fuller* at 1212; § 366.04(5), Fla. Stat. This statutory authority granted to the PSC is not subject to local regulation. *Roemmele-Putney v. Reynolds*, 106 So. 3d 78, 81 (Fla. 3d DCA 2013) (stating that PSC's statutory authority would be eviscerated if initially subject to local governmental regulation). Any modification or termination of a Commission-approved territorial order must first be made by the Commission pursuant to its exclusive jurisdiction. *Fuller* at 1212. Thus, the City retains its right and obligation to provide electric service within the territory described in the Territorial Orders unless and until the Territorial Orders are modified or terminated by the Commission.

The Town contends that it is not – as the City argues – collaterally attacking the PSC's exclusive and superior jurisdiction and lawful Territorial Orders issued in the exercise of its jurisdiction. Rather, it is the Town's position that it has a right to be protected from the City's exercise of extra-territorial power within the Town after expiration of the Franchise Agreement, but that the Town is uncertain of such rights under the terms of the Franchise Agreement, the Florida Constitution, the Municipal Home Rule Powers Act and section 180.02(2), Florida Statutes, after expiration of the Franchise Agreement.[4]

[4] At the hearing, the Town also stated that it seeks a declaration from the court that after expiration of the Franchise Agreement, the Town has the authority to choose what utility

The Town maintains that only the court has the authority to address these threshold contractual, constitutional, and statutory issues because the PSC's authority is limited to issuing declarations interpreting the rules, orders and statutory provisions of the Commission. The Town thus contends that it is not seeking to challenge the PSC's authority under Chapter 366 or seeking any modification of the territorial agreement between the City and FPL. In addition, the Town at hearing argued – and the City agreed – that how expiration of the Franchise Agreement affects the continuing use of the Town's rights-of-way is not a matter within the jurisdiction of the PSC.

Although artfully argued otherwise, the actual relief sought by the Town amounts to an unfeasible request that the court determine what utility will provide electric service to the Town. This determination already has been made by the PSC in the Territorial Orders. *See Fuller* at 1210-13 (the circuit court has no jurisdiction to modify or invalidate a territorial agreements approved by the PSC in the exercise of its exclusive jurisdiction).

The relief requested by the Town is squarely within the jurisdiction of the PSC. First, pursuant to the PSC's statutory authority under section 366.04(2)(d) and (e), Florida Statutes, to approve and modify territorial agreements through its territorial orders and second, pursuant to section 366.04(1), Florida Statutes, providing the PSC with jurisdiction exclusive and superior to that of the Town, and directing that the orders of the Commission shall prevail in the event of conflict. *See Fuller* at 1212.

Accordingly, the court finds that it is without subject matter jurisdiction to grant the relief requested and that Count I should be dismissed with prejudice. Although this Court

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will provide electric service to the Town pursuant to its powers under Chapter 29163, the special act creating the Town.

5

is without jurisdiction to decide the relief requested in Count I, the Town may seek relief before the Commission and, if unsuccessful there, by direct appeal to the Florida Supreme Court. *Reynolds* at 80-81; *Bryson* at 1255.

Count II for Anticipatory Breach. In Count II, the Town alleges that the City has breached the Franchise Agreement by 1) "repudiating its obligation to recognize the expiration of the Franchise Agreement on November 6, 2016 and asserting it will continue to assert extra-territorial monopoly powers and extracting monopoly profits ... following the expiration of the Franchise Agreement" and 2) "asserting its electric facilities will continue to occupy the Town's rights-of-way and other public areas after the Franchise Agreement expires."

After expiration of the Franchise Agreement, there will be no Franchise Agreement to be breached by the City through the purported assertion of extra-territorial powers and continued occupation of the Town's rights-of-way and other public areas. Or as the City more succinctly argues: There will be nothing to breach. Furthermore, the Town has not pled facts supporting any existing breach of the City's contractual obligations under the Franchise Agreement attached to the amended complaint. The Franchise Agreement does not address the effect of its expiration and there are no provisions in the Franchise Agreement which call for the City to remove or relocate its electric facilities or cease providing electric service to the Town upon expiration.

For the reasons stated above, the Court finds that Count II for anticipatory breach fails to state a cause of action and should be dismissed with prejudice. *See Jaffer v. Chase Home Fin., LLC*, 155 So. 3d 1199, 1202 (Fla. 4th DCA 2015) (if document attached to complaint conclusively negates a claim, the plain language of document will control

and may be basis for dismissal); *Kairalla v. John D. and Catherine T. MacArthur Foundation,* 534 So.2d 774, 775 (Fla. 4th DCA 1988) (dismissal with prejudice is appropriate where it is apparent the pleading cannot be amended to state a cause of action).

Dismissal, however, of Counts I and II are without prejudice to the Town's right to file an amended complaint or separate complaint alleging other grounds for the removal or relocation of the City's electric facilities from the Town's rights-of-way and other public areas after expiration of the Franchise Agreement.

Count III for Breach of Contract. The Town alleges that the City has breached the Franchise Agreement by failing to furnish electric services to the Town in accordance with accepted electric utility standards and charge only reasonable rates as provided in the Franchise Agreement, and that the Town has been harmed by the breach. The Town seeks an award of damages in an amount reflecting the difference between the amount the City has charged the Town and the amount the Town would have paid if such rates had been reasonable. The Town has set forth a cause of action for breach of contract, and the City's motion to dismiss should be denied as to Count III.

Count IV for Declaratory and Supplemental Relief Relating to the City's Unreasonable and Oppressive Electric Rates. The Town seeks a declaration that the City's utility rates are "unreasonable, oppressive, and inequitable in violation of the special act creating the [Town] and common law."[5] It additionally seeks an award of supplemental

[5] The amended complaint alleges a violation of the special act creating the *City* and the court assumes a scrivener's error was made. The *Town's* authority with respect to utilities granted by the special act creating the Town, Chapter 29163, Laws of Florida, are alleged in paragraphs 15 and 16 of the amended complaint.

relief in the form of a refund of any payment of rates that were made in excess of what was reasonable as well as a referral of factual questions related to the City's utility management practices to a jury.

At the hearing, the City argued that Count IV should be dismissed because the Town has failed to join indispensable parties, presumably Town residents, whose rights would be affected by any declaration. Although residents of the Town have an interest in the subject matter of the litigation, they are not indispensable parties whose inclusion in the litigation would be required for a complete and efficient resolution of the controversy between the Town and the City. *See Gonzales v. MI Temps of Florida Corp.*, 664 So. 2d 17, 18 (Fla. 4th DCA 1995).

The City also contends that the Town has failed to state a cause of action for declaratory relief. The test of the sufficiency of a complaint for declaratory action is not whether the complaint shows that plaintiff will succeed in getting a declaration of right in accordance with its theory and contention, but whether it is entitled to a declaration of rights at all. *Modernage Furniture Corp. v. Miami Rug Co.*, 84 So.2d 916 (Fla.1955); *see also Mills v. Ball,* 344 So.2d 635, 638 (Fla. 1st DCA 1977). The party seeking a declaration under Declaratory Judgment Act must show the existence or nonexistence of some right or status and that there is a bona fide, actual, present, and practical need for the declaration. § 86,021, Fla. Stat.; *Hialeah Race Course, Inc. v. Gulfstream Park Racing Ass'n*, 201 So. 2d 750, 752-53 (Fla. 4th DCA 1968). The moving party must also show that it is in doubt as to the existence or nonexistence of some right or status and that it is entitled to have that doubt removed. § 86.011(1); *Kelner v. Woody*, 399 So. 2d 35, 37 (Fla. 3d DCA 1981) (citations omitted).

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Count IV of the amended complaint states that the City has a legal duty to charge only reasonable electric rates for the electric services that it provides pursuant to the Franchise Agreement and its legal duty as described in Paragraph 38 of the amended complaint. However, the Town does not allege any doubt as to its rights under Section 5 of the Franchise Agreement providing that the City's rates for electric utilities shall be reasonable. Additionally, the Town has failed to identify any provision of the Franchise Agreement in doubt or in need of construction. To the contrary, the Town has expressly alleged that the City has breached its clear duty under the explicit terms of the Franchise Agreement by charging rates that are unreasonable and that the "Town has a clear legal right to pay only those electric rates which are reasonable, just, and equitable ...". The Town shows a similar absence of doubt in its allegations related to the City's utility management decisions set forth in Paragraph 38 of the amended complaint.[6] Nor does the Town assert any doubt as to Chapter 29163, Laws of Florida, the special law creating the Town, or as to the Town's powers with respect to utilities under Chapter 29163. Under these circumstances, where the face of the amended complaint demonstrates there is no doubt, dismissal of a claim for declaratory relief is proper. *Kelner* at 37-38.

More significantly, in requesting a declaration that the unreasonable rates charged by the City are in violation of the special act creating the Town, the Town is not seeking a declaration as to any rights or status; rather, the Town seeks a declaration that the City's actions are unlawful – an issue properly determined in an action at law and which

[6] The same can be said for the Town's assertion in response to the motion to dismiss that, independent of the City's contractual duty, Florida law is clear that a municipal electric utility has an inherent duty to its customers to operate and manage its electric utility with the same prudence and sound fiscal management required of investor-owned utilities.

is appropriately raised in Count III for breach of contract. Determination of the breach of contract claim in Count III involves the same factual dispute as the claim for declaratory relief in Count IV, namely whether the City's utility rates are unreasonable and, if so, to what extent.

Although the Declaratory Judgment Act is to be liberally construed, *see* § 86.010, Fla. Stat., granting a declaratory judgment remains discretionary with the court and is not the right of a litigant as a matter of course. *Kelner v. Woody*, 399 So. 2d 35, 37 (Fla. 3d DCA 1981); *N. Shore Bank v. Town of Surfside*, 72 So. 2d 659, 661-62 (Fla. 1954). "[A] trial court should not entertain an action for declaratory judgment on issues which are properly raised in other counts of the pleadings and already before the court, through which the plaintiff can secure full, adequate and complete relief." *McIntosh v. Harbour Club Villas,* 468 So. 2d 1075, 1080–81 (Fla. 3d DCA 1985) (Nesbitt, J. specially concurring); *see Taylor v. Cooper*, 60 So. 2d 534, 535-36 (Fla. 1952).

Because the Town's claim for declaratory relief is subsumed within its claim for breach of contract, Count IV for declaratory relief should be dismissed with prejudice. *See Taylor* at 535-36; *see also Perret v. Wyndam Vacation Resorts, Inc.*, 889 F. Supp. 2d 133, 1346-47 (S.D. Fla. 2012) (where declaration sought is essentially the same as relief sought in plaintiff's other claims, claim for declaratory relief is dismissed with prejudice).

IT IS THUS ORDERED AND ADJUDGED that defendant City of Vero Beach's motion to dismiss amended complaint is granted in part and denied in part as follows:

1. The motion to dismiss is GRANTED as to Count I for declaratory relief, Count II for anticipatory breach and Count IV for declaratory relief, which particular

counts as plead are hereby dismissed with prejudice. Plaintiff shall have 20 days leave to file an amended complaint (alleging other grounds for the removal or relocation of the City's electric facilities from the Town's rights-of-way and other public areas after expiration of the Franchise Agreement).

2. The motion to dismiss is DENIED as to Count III for breach of contract. Defendant City of Vero Beach shall have the later of 20 days from the date of this Order or 40 days from the Plaintiff's filing of a second amended complaint in which to file a responsive pleading.

DONE AND ORDERED this 11th day of November, 2015 at Vero Beach in Indian River County, Florida.

/s/ Cynthia L. Cox
CYNTHIA L. COX, CIRCUIT JUDGE

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11

Item 4

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 18, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (Barrett, Lester)
Division of Economics (Draper, Guffey)
Office of the General Counsel (Vilafrate, Janjic)

RE: Docket No. 160001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor.

AGENDA: 03/01/16 – Regular Agenda – Parties May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On February 1, 2016, Duke Energy Florida, LLC (DEF) filed a Notice Of Intent to File a Petition for Mid-Course Correction, asserting that its Petition for Mid-Course Correction would be filed on or before February 8, 2016. On February 8, 2016, DEF filed its Petition for Mid-Course Correction to its 2016 Fuel Adjustment and Capacity Factors (DEF Petition).

On February 2, 2016, Florida Power & Light Company (FPL) filed a Petition for Mid-Course Correction to its 2016 Fuel Adjustment Factors (FPL Petition).

The DEF and FPL filings seek to reduce the respective 2016 fuel and purchased power cost recovery factors (fuel factors) approved in Order No. PSC-15-0586-FOF-EI.[1] FPL has requested that the revised fuel factors become effective with the in-service date of the Port Everglades Energy Center, which is expected to be April 1, 2016, and DEF has requested that its revised fuel factors become effective when the April 2016 billing cycle begins. The requested reductions for DEF and FPL are primarily due to decreases in projected 2016 natural gas prices.

This case is scheduled to be voted on at the March 1, 2016 Agenda Conference or 30 days before the April 2016 billing cycle begins. Typically, effective dates are set a minimum of 30 days after a Commission vote modifying charges as the result of a mid-course correction.[2] This time limit is imposed in order to not have new rates applied to energy consumed before the effective date of the Commission's action, i.e., the date of the vote. However, the Commission has also implemented charges in less than 30 days when circumstances warrant.[3] In this instance, the interval between the Commission's vote on this matter (March 1, 2016) and the proposed implementation date (expected to be April 1, 2016) is 30 days, which staff believes is sufficient.

Mid-course corrections are part of the fuel and purchased power cost recovery clause (fuel clause) proceeding, and such corrections are used by the Commission between fuel clause hearings whenever costs deviate from revenues by a significant margin. Petitions for mid-course corrections to fuel factors are addressed by Rule 25-6.0424, Florida Administrative Code (F.A.C.). Under this rule, a utility must notify the Commission whenever it expects to experience an under-recovery or over-recovery greater than 10 percent. Pursuant to Rule 25-6.0424, F.A.C., the mid-course percentage is the estimated end-of-period total net true-up amount divided by the current period's total actual and estimated jurisdictional fuel revenue applicable to period amount.

Mid-course corrections are considered preliminary procedural decisions, and any over-recoveries or under-recoveries caused by or resulting from the new fuel factors adopted by the mid-course correction may be included in the following year's fuel factors.

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[1]Order No. PSC-15-0586-FOF-EI, issued December 23, 2015, in Docket No: 150001-EI, *In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor*.

[2]Gulf Power Co. v. Cresse, 410 So.2d 492 (Fla. 1982); Order No. PSC-96-0907-FOF-EI, issued on July 15, 1996, in Docket No. Docket No. 960001-EI, *In re: Fuel and purchased power cost recovery clause and generating performance incentive factor*; Order No. 96-0908-FOF-EI, issued July 15, 1996, in Docket No. 960001-EI, *In re: Fuel and purchased power cost recovery clause and generating performance incentive factor*; Order No. PSC-97-0021-FOF-EI, issued on January 6, 1997, in Docket No. 970001-EI, *In re: Fuel and purchased power cost recovery clause and generating performance incentive factor*.

[3]Order No. PSC-01-0963-PCO-EI, issued April 18, 2001, in Docket No. 010001-EI, *In re: Fuel and purchased power cost recovery clause and generating performance incentive factor*, (allowing recovery of increase in fuel factor in order to decrease the carrying costs and therefore the total amount ratepayers were ultimately required to repay.); Order No. PSC-00-2383-FOF-GU, issued December 12, 2000, in Docket No. 000003-GU, *In re: Purchased gas adjustment (PGA) true-up (*allowing recovery of an increased gas fuel factor due to drastic increases in natural gas prices in winter of 2000-2001.*)*; Order No. PSC-15-0161-PCO-EI, issued April 30, 2015, in Docket No. 150001-EI, *In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor*. (approving FPL's petition for a mid-course correction, thereby reducing fuel factors with less than 30 days notice).

The Commission's jurisdiction to consider fuel clause proceedings derives from the Commission's authority to set fair and reasonable rates, found in Section 366.05, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve FPL's petition for a mid-course revision to its 2016 fuel cost recovery factors and associated tariff sheets?

Recommendation: Yes. Staff recommends the Commission approve FPL's Petition for mid-course correction to its 2016 fuel cost recovery factors and the associated tariff sheets. The revised fuel cost recovery factors and associated tariffs should become effective with the in-service date of the Port Everglades Energy Center, which is expected to be April 1, 2016. The recommended fuel cost recovery factors are presented in Attachment A, and the associated tariff sheets are shown in Attachment C. (Barrett, Lester, Draper, Guffey)

Staff Analysis: FPL's currently authorized 2016 fuel factors were set by the Commission following the November 2, 2015 fuel hearing, and codified in Order No. PSC-15-0586-FOF-EI.[4] These factors are based on FPL's projected fuel costs for 2016, plus the true-up amount from 2015.

FPL states that its original projected cost for natural gas used the New York Mercantile Exchange (NYMEX)[5] futures contract prices for each month of 2016, based on a forward curve as of July 27, 2015. Forward curve prices represent the price of gas for delivery in a particular month in the future. Futures contracts are actively traded and the prices can change hour-by-hour throughout a trading day.

In its Petition, FPL noted that projected natural gas commodity prices have declined substantially since its original projections were developed. For its mid-course calculations, FPL used NYMEX futures contract prices based on a forward curve as of January 4, 2016. According to FPL, the decrease in 2016 projected gas prices from the original projections to the mid-course projections is about 21 percent.[6]

In addition, FPL updated its 2015 true-up amount to reflect twelve months of actual data (January through December 2015). Originally, the actual/estimated true-up was an under-recovery of $66,818,243. FPL's mid-course filing shows the actual under-recovery for 2015 was $37,050,993 or a $29,767,250 reduction in the 2015 under-recovery amount. FPL projects that the current fuel factors for 2016 will produce an over-recovery of approximately $256 million, resulting in a net over-recovery of about $286 million, or 9.66 percent (rounded to 9.7 percent in the FPL Petition). FPL acknowledges that its projected over-recovery percentage of 9.66 percent is less than the threshold identified for notification under Rule 25-6.0424, F.A.C., but states that Section 2 of Rule 25-6.0424, F.A.C., does not preclude it from making a mid-course filing.

[4]Order No. PSC-15-0586-FOF-EI, issued December 23, 2015, in Docket No: 150001-EI, *In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor*.
[5]The New York Mercantile Exchange (NYMEX) is a commodities futures exchange widely used by the electric industry for pricing natural gas.
[6]The FPL Petition states that the NYMEX average 2016 price of natural gas based on the July 27, 2015 forward curve was $3.14 per MMBtu. The comparative forward curve as of January 4, 2016 reflects the NYMEX average 2016 price of natural gas had declined to $2.48 per MMBtu, a reduction of $0.66 per MMBtu (21.02 percent).

In its Petition and on Schedule E1-B, FPL projected its end of year net true up for 2016 would be an over-recovery of $285,525,014, based on revised estimated figures for January through December 2016. Additionally, FPL projects that Jurisdictional Fuel Revenues Applicable for this Period will be $2,956,151,664. Based on Rule 25-6.0424, F.A.C., the mid-course percentage is the estimated end-of-period total net true-up amount ($285,525,014) divided by the current period's total actual and estimated jurisdictional fuel revenue applicable to period amount ($2,956,151,664), resulting in the mid-course calculation of 9.66 percent.

For 2016, FPL projects its generation mix will be approximately 71 percent natural gas. Therefore, a decrease in the projected cost of gas for FPL can significantly decrease its fuel factors.

FPL's current 1,000 kilowatt hour (kWh) residential bill is $93.38 per month with a fuel cost recovery component of $25.80 per month. In the March billing cycle, FPL will be implementing a $0.32 per month true up adjustment to the Storm Restoration Surcharge, and in April's billing cycle, FPL plans to implement the fuel factor adjustments the Commission approved for the Port Everglades Energy Center Generation Base Rate Adjustment (GBRA) approved in Order No. PSC-15-0586-FOF-EI. In its Petition, FPL requests that its proposed mid-course correction to fuel factors be implemented concurrent with the GBRA adjustments in the April billing cycle. Assuming the Storm Restoration Surcharge adjustment (in March), the GBRA adjustments (in April), and the revised fuel cost recovery factors proposed in its mid-course correction (proposed to coincide with the GBRA adjustments), the total residential bill for 1,000 kWh of usage for April through December 2016 will be $91.73 per month, with a fuel cost recovery component of $21.73 per month. Upon approval, the total of all adjustments results in a net reduction of $1.65 per month for residential customers using 1,000 kWh of electricity, as shown in Attachment B. FPL believes implementing reduced fuel cost recovery factors is in the best interests of its customers since the factors would be decreasing, not increasing, and customers would get the benefit of reduced rates as quickly as administratively possible.

At an informal meeting between staff and interested parties, FPL stated that it intends to provide notice to customers in advance of the Commission's vote regarding its mid-course correction request through bill inserts, and also via website links.[7]

Conclusion

Staff recommends the Commission approve FPL's Petition for mid-course correction to its 2016 fuel cost recovery factors and the associated tariff sheets. The revised fuel cost recovery factors and associated tariffs should become effective with the in-service date of the Port Everglades Energy Center, which is expected to be April 1, 2016. The recommended fuel cost recovery factors are presented in Attachment A, and the associated tariff sheets are shown in Attachment C.

[7]Staff reviewed drafts of notices FPL will use for residential and business customers.

Issue 2: Should the Commission approve DEF's petition for a mid-course revision to its 2016 fuel and capacity cost recovery factors and the associated tariff sheet?

Recommendation: Yes. Staff recommends the Commission approve DEF's Petition for mid-course correction to its 2016 fuel and capacity cost recovery factors and the associated tariff sheet. The revised fuel and capacity cost recovery factors should become effective with the first billing cycle in April 2016. The recommended fuel and capacity cost recovery factors are presented in Attachment D, and the associated tariff sheet is shown in Attachment F. (Barrett, Lester, Draper, Guffey)

Staff Analysis: There are two specific requests in DEF's Petition. First, DEF seeks a mid-course adjustment to its 2016 fuel cost recovery factors which were set by the Commission following the November 2, 2015 fuel hearing and codified in the 2015 Fuel Order. These factors are based on DEF's projected fuel costs for 2016, plus the true-up amount from 2015. Second, DEF seeks to adjust the capacity cost recovery factors for 2016, which were also set following the November 2, 2015 fuel hearing, and codified in the 2015 Fuel Order.

Midcourse Adjustment for Fuel Cost Recovery Factors

DEF states that its original projected cost for natural gas used NYMEX futures contract prices for each month of 2016, based on a forward curve as of June 11, 2015. Forward curve prices represent the price of gas for delivery in a particular month in the future. Futures contracts are actively traded and the prices can change hour-by-hour throughout a trading day.

In its Petition, DEF noted that projected natural gas commodity prices have declined substantially since its original projections were developed. For its mid-course calculations, DEF used NYMEX futures contract prices based on a forward curve as of January 6, 2016. According to DEF, the decrease in 2016 projected natural gas prices from the original projections to the mid-course projections is about 30 percent.[8]

In addition to the revised fuel price projections, DEF updated its 2015 true-up amount to reflect twelve months of actual data (January through December 2015). Originally, the actual/estimated true-up was an over-recovery of $78,731,031. DEF's mid-course filing shows the actual over-recovery for 2015 was $116,588,895, a difference of $37,857,864. Based on the updated projections for 2016, DEF anticipates an end of period total true-up over-recovery of $161,726,581, resulting in a total end of period true-up of $199,584,445.

Based on Rule 25-6.0424, F.A.C., the mid-course percentage is the estimated end-of-period total true-up amount ($199,584,445) divided by the current period's total actual and estimated jurisdictional fuel revenue applicable to period amount. Schedule E1-B, attached to DEF's Petition, shows that DEF's total actual and estimated jurisdictional fuel revenue applicable to period amount is $1,544,204,763, resulting in the mid-course calculation of 12.93 percent.

[8]The Duke Petition included a matrix of Projected Market Price by Fuel Type showing the NYMEX average 2016 price of natural gas based on the June 11, 2015 forward curve was $3.20 per MMBtu. The comparative forward curve as of January 6, 2016 reflects the NYMEX average 2016 price of natural gas had declined to $2.47 per MMBtu, a reduction of $0.73 per MMBtu (29.55 percent).

For 2016, DEF projects its generation mix will include approximately 74 percent natural gas. Therefore, a decrease in the projected cost of gas for DEF can significantly decrease its fuel factors.

DEF's current 1,000 kilowatt hour (kWh) residential bill is $114.15 per month with a fuel component of $33.53 per month. Assuming that its mid-course correction is approved, the fuel portion of a residential bill for 1,000 kWh of usage for April through December 2016 will be reduced by $6.74 per month, to $26.79 per month. Staff notes that DEF's Petition also requests an adjustment to capacity cost recovery factors due to an error that understated actual costs. On a stand-alone basis, the understated capacity costs would have increased the bill for a residential customer using 1,000 kilowatt hours by $1.05 per month. However, when implemented concurrent with the reduction to fuel cost recovery factors pursuant to the mid-course correction, the net reduction in fuel cost recovery amounts more than offsets the understated capacity costs. Upon approval, the bill for a residential customer using 1,000 kilowatt hours falls to $108.32 per month, a net reduction of $5.83 per month from February bills, as shown in Attachment E.

DEF has requested that the revised fuel factors become effective with the first billing cycle of April 2016. This case is scheduled to be voted on at the March 1, 2016 agenda conference or 30 days before the April 2016 billing cycle begins. DEF has stated that it will provide notice of its mid-course correction request through on-bill notices in the March billing cycle, and inserts for the April cycle.[9]

Midcourse Adjustment for Capacity Cost Recovery Factors

In its Petition, DEF stated that it discovered an error in the capacity cost recovery amounts that were used in calculating the factors for 2016, which were codified in Order No. PSC-15-0586-FOF-EI.[10] On DEF's revised Schedule E12-A, its projected capacity costs were understated by $29,153,914, when compared to the similar schedule from its projection filing.[11] In addition to revising its capacity cost projections, DEF updated its 2015 true-up amount to reflect twelve months of actual data (January through December 2015). Originally, the actual/estimated true-up was an under-recovery of $38,643,256. DEF's mid-course filing shows the actual under-recovery for 2015 was **$**35,762,070, a difference of $2,881,186. Based on these updated projections for 2016, the net additional capacity cost DEF seeks recovery for is $26,272,728. When the Revenue Tax Multiplier of 1.00072 is applied, the final adjustment DEF is proposing is $26,291,645, as reflected on Line 41 of Schedule E12-A.

Staff notes that if the impact of the net changes for these capacity cost recovery amounts were calculated apart from the mid-course correction to fuel cost recovery factors, the result would increase the bill for a residential customer using 1,000 kilowatt hours by $1.05 per month, or 8.45 percent from currently-approved capacity cost recovery amounts. However, in the interest

[9]Staff reviewed drafts of notices DEF will use for residential and business customers.
[10]Order No. PSC-15-0586-FOF-EI, issued December 23, 2015, in Docket No: 150001-EI, *In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor*.
[11]On September 1, 2015, DEF filed projection schedules for 2016, and Line 30 of Schedule E12-A reflects that DEF estimated its Total Capacity Costs for the period January-December, 2016 would be $358,842,970. The similar schedule in DEF's mid-course correction filing revises this amount to $387,996,884, which includes a January 2016 True-up balance adjustment of $14,191,494.

of providing its customers with a more accurate bill and avoiding inaccurate under-recovered amounts, DEF is petitioning for the capacity cost recovery changes to be implemented concurrent with the reduction to fuel cost recovery factors described above. Implementation in this manner more than offsets what would have been a net increase to residential customers using 1,000 kilowatt hours. Attachment E summarizes the bill impact for a residential customer using 1,000 kilowatt hours, showing that on a total basis, the currently-approved amount of $114.15 per month is reduced to $108.32 per month for April through December 2016, a net reduction of $5.83 per month.

Conclusion

Staff recommends the Commission approve DEF's Petition for mid-course correction to its 2016 fuel and capacity cost recovery factors and the associated tariff sheet. The revised fuel and capacity cost recovery factors should become effective with the first billing cycle in April 2016. The recommended fuel and capacity cost recovery factors are presented in Attachment D, and the associated tariff sheet is shown in Attachment F.

Issue 3: Should this docket be closed?

Recommendation: The fuel docket is on-going and should remain open. (Vilafrate)

Staff Analysis: The fuel docket is on-going and should remain open.

FPL's Proposed Mid-Course Correction Fuel Cost Recovery Factors April 2016 – December 2016				
GROUP	RATE SCHEDULE	AVERAGE FACTOR	FUEL RECOVERY LOSS MULTIPLIER	FUEL RECOVERY FACTOR
A	RS-1 first 1,000kWh	2.495	1.00267	2.173
	RS-1 all additional kWh	2.495	1.00267	3.173
A	GS-1, SL-2, GSCU-1, WIES-1	2.495	1.00267	2.502
A-1	SL-1, OL-1, PL-1	2.349	1.00267	2.355
B	GSD-1	2.495	1.00260	2.501
C	GSLD-1, CS-1	2.495	1.00185	2.500
D	GSLD-2, CS-2, OS-2, MET	2.495	0.99490	2.482
E	GSLD-3, CS-3	2.495	0.97228	2.426
A	GST-1 On-Peak	3.271	1.00267	3.280
	Off-Peak	2.173	1.00267	2.179
	RTR-1 On-Peak			0.778
	Off-Peak			(0.323)
B	GSDT-1, CILC-1(G), HLFT-1 (21-499 kW) On-Peak	3.271	1.00260	3.280
	Off-Peak	2.173	1.00260	2.179
C	GSLDT-1, CST-1, HLFT-2 (500-1,999 kW) On-Peak	3.271	1.00185	3.277
	Off-Peak	2.173	1.00185	2.177
D	GSLDT-2, CST-2, HLFT-3 (2,000+ kW) On-Peak	3.271	0.99545	3.256
	Off-Peak	2.173	0.99545	2.163
E	GSLDT-3, CST-3, CILC-1(T), ISST-1(T) On-Peak	3.271	0.97228	3.180
	Off-Peak	2.173	0.97228	2.113
F	CILC-1(D), ISST-1(D) On-Peak	3.271	0.99459	3.253
	Off-Peak	2.173	0.99459	2.161

FPL's Proposed Mid-Course Correction
Seasonal Demand Time of Use Rider (SDTR) Fuel Recovery Factors
On-Peak: June 2016 through September 2016
Weekdays 3:00 pm to 6:00 pm
Off-Peak: All Other Hours

GROUP	OTHERWISE APPLICABLE RATE SCHEDULE	AVERAGE FACTOR	FUEL RECOVERY LOSS MULTIPLIER	SDTR FUEL RECOVERY FACTOR
B	GSD(T)-1 On-Peak	4.608	1.00260	4.620
	Off-Peak	2.218	1.00260	2.224
C	GSLD(T)-1 On-Peak	4.608	1.00185	4.617
	Off-Peak	2.218	1.00185	2.222
D	GSLD(T)-2 On-Peak	4.608	0.99545	4.587
	Off-Peak	2.218	0.99545	2.208

FPL's Proposed Mid-Course Correction Comparison of 1,000 kWh Residential Bill					
Component	February 2016 (Current)	March 2016 (Stand-alone Storm Charge Adjustment)	April 2016 (Stand-alone GBRA Adjustment)	April – Dec. 2016 (Storm Charge Adjustment and GBRA Adjustment Combined with Proposed Mid-Course Correction)	Net Difference from Current
Base Charge	$54.86	$54.86	$57.00	$57.00	$2.14
Fuel Cost Recovery	$25.80	$25.80	$25.19	$21.73	-$4.07
Conservation Cost Recovery	$1.86	$1.86	$1.86	$1.86	$0
Capacity Payment	$4.54	$4.54	$4.54	$4.54	$0
Nuclear Cost Recovery	$0.34	$0.34	$0.34	$0.34	$0
Environmental Cost Recovery	$2.63	$2.63	$2.63	$2.63	$0
Storm Restoration Surcharge	$1.02	$1.34	$1.34	$1.34	$0.32
Subtotal	$91.05	$91.37	$92.90	$89.44	-$1.61
Gross Receipts Tax	$2.33	$2.34	$2.38	$2.29	-$0.04
Totals	**$93.38**	**$93.71**	**$95.28**	**$91.73**	**-$1.65**

FLORIDA POWER & LIGHT COMPANY

Forty-Fifth Revised Sheet No. 8.030
Cancels Forty-Fourth Revised Sheet No. 8.030

BILLING ADJUSTMENTS

The following charges are applied to the Monthly Rate of each rate schedule as indicated and are calculated in accordance with the formula specified by the Florida Public Service Commission.

RATE SCHEDULE	FUEL ¢/kWh Levelized	FUEL ¢/kWh On-Peak	FUEL ¢/kWh Off-Peak	CONSERVATION ¢/kWh	CONSERVATION $/kW	CAPACITY ¢/kWh	CAPACITY $/kW	ENVIRON-MENTAL ¢/kWh
RS-1, RS-1 w/RTR-1 1st 1,000 kWh	2.173			0.186		0.488		0.263
RS-1, RS-1 w/ RTR-1 all addn kWh	3.173			0.186		0.488		0.263
RS-1 w/RTR-1 All kWh		0.778	(0.323)	0.186		0.488		0.263
GS-1	2.502			0.177		0.466		0.251
GST-1		3.280	2.179	0.177		0.466		0.251
GSD-1, GSD-1 w/SDTR (Jan – May)(Oct – Dec)	2.501				.61		1.55	0.233
GSD-1 w/SDTR (Jun-Sept)		4.620	2.224		.61		1.55	0.233
GSDT-1, HLFT-1 GSDT-1w/SDTR (Jan – May)(Oct – Dec)		3.280	2.179		.61		1.55	0.233
GSDT-1 w/SDTR (Jun-Sept)		4.620	2.224		.61		1.55	0.233
GSLD-1, CS-1, GSLD-1w/SDTR (Jan – May)(Oct – Dec)	2.500				.68		1.78	0.232
GSLD-1 w/SDTR (Jun-Sept)		4.617	2.222		.68		1.78	0.232
GSLDT-1, CST-1, HLFT-2, GSLDT-1 w/SDTR (Jan–May & Oct–Dec)		3.277	2.177		.68		1.78	0.232
GSLDT-1 w/SDTR (Jun-Sept)		4.617	2.222		.68		1.78	0.232
GSLD-2, CS-2, GSLD-2 w/SDTR (Jan – May)(Oct – Dec)	2.482				.70		1.70	0.205
GSLD-2 w/SDTR (Jun-Sept)		4.587	2.208		.70		1.70	0.205
GSLDT-2, CST-2, HLFT-3 , GSLDT-2 w/SDTR (Jan – May)(Oct – Dec)		3.256	2.163		.70		1.70	0.205
GSLDT-2 w/SDTR (Jun-Sept)		4.587	2.208		.70		1.70	0.205
GSLD-3, CS-3	2.426				.72		1.88	0.200
GSLDT-3, CST-3		3.180	2.113		.72		1.88	0.200

NOTE: The Billing Adjustments for additional Rate Schedules are found on Sheet No. 8.030.1

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective:

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FLORIDA POWER & LIGHT COMPANY

Twenty-First Revised Sheet No. 8.030.1
Cancels Twentieth Revised Sheet No. 8.030.1

(Continued from Sheet No. 8.030)
BILLING ADJUSTMENTS (Continued)

RATE SCHEDULE	FUEL ¢/kWh	¢/kWh	¢/kWh	CONSERVATION ¢/kWh	$/kW		CAPACITY ¢/kWh	$/kW		ENVIRON -MENTAL ¢/kWh
	Levelized	On-Peak	Off-Peak							
OS-2	2.482			0.142			0.366			0.210
MET	2.482				0.77			2.04		0.228
CILC-1(G)		3.280	2.179		0.79			1.98		0.205
CILC-1(D)		3.253	2.161		0.79			1.98		0.205
CILC-1(T)		3.180	2.113		0.77			1.83		0.192
SL-1,OL-1, PL-1	2.355			0.073			0.095			0.100
SL-2, GSCU-1	2.502			0.137			0.289			0.192
					RDD	DDC		RDD	DDC	
SST-1(T)		3.180	2.113		0.08	0.04		0.21	0.10	0.186
SST-1(D1)		3.280	2. 179		0.08	0.04		0.22	0.10	0.217
SST-1(D2)		3.277	2.177		0.08	0.04		0.22	0.10	0.217
SST-1(D3)		3.256	2.163		0.08	0.04		0.22	0.10	0.217
ISST-1(D)		3.253	2.161		0.08	0.04		0.22	0.10	0.217
ISST-1(T)		3.180	2.113		0.08	0.04		0.21	0.10	0.186

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DEF's Proposed Mid-Course Correction
Fuel and Capacity Cost Recovery Factors
April 2016 – December 2016

Cost Recovery Factors

Rate Schedule	Delivery Voltage Level	Fuel Cost Recovery			Capacity Cost Recovery	
		Levelized (c/ kWh)	On-Peak (c/ kWh)	Off-Peak (c/ kWh)	(c/ kWh)	($/ kW)
RS-1, RST-1, RSL-1, RSL-2, RSS-1	Secondary		3.854	2.537	1.523	
< 1,000		2.679				
> 1,000		3.679				
GS-1, GST-1	Secondary	2.973	3.871	2.548	1.171	
	Primary	2.943	3.832	2.522	1.159	
	Transmission	2.914	3.793	2.497	1.148	
GS-2	Secondary	2.973			0.836	
GSD-1, GSDT-1, SS-1	Secondary	3.008	3.916	2.578		4.24
	Primary	2.978	3.877	2.552		4.20
	Transmission	2.948	3.838	2.526		4.15
CS-1, CST-1, CS-2, CST-2, CS-3, CST-3, SS-3	Secondary	3.008	3.916	2.578		2.49
	Primary	2.978	3.877	2.552		2.47
	Transmission	2.948	3.838	2.526		2.44
IS-1, IST-1, IS-2, IST-2, SS-2	Secondary	3.008	3.916	2.578		3.39
	Primary	2.978	3.877	2.552		3.36
	Transmission	2.948	3.838	2.526		3.33
LS-1	Secondary	2.828			0.233	
SS-1, SS-2, SS-3 Monthly	Secondary					0.412
	Primary					0.408
	Transmission					0.404
SS-1, SS-2, SS-3 Daily	Secondary					0.196
	Primary					0.194
	Transmission					0.192

DEF's Proposed Mid-Course Correction Comparison of 1,000 kWh Residential Bill			
Component	February 2016 (Current)	April – Dec. 2016[12]	Difference from Current
Base Charge	$58.50	$58.50	$0
Fuel Cost Recovery	$33.53	$26.79	($6.74)
Capacity Cost Recovery	$12.42	$13.47	$1.05
Energy Conservation Cost Recovery	$3.25	$3.25	$0
Environmental Cost Recovery	$1.84	$1.84	$0
Nuclear - CR3 Uprate	$1.76	$1.76	$0
Nuclear - Levy	$0	$0	$0
Subtotal	$111.30	$105.61	($5.69)
Gross Receipts Tax	$2.85	$2.71	($0.14)
Totals	**$114.15**	**$108.32**	**($5.83)**

[12]On Schedule E-10, DEF states that its Proposed Mid-Course Correction amounts do not include the impact of recovering the CR3 regulatory asset through issuance of low-cost bonds. The estimated bill impact for a residential customer using 1,000 kWh of electricity is $2.93 per month, resulting in total estimated bill of $111.32. Staff notes that as of the date of this memorandum, the bonds have not been issued, but are expected to be issued in March or April, 2016.

DUKE ENERGY

SECTION NO. VI
SEVENTY-FOURTH REVISED SHEET NO. 6.105
CANCELS SEVENTY-THIRD REVISED SHEET NO. 6.105

RATE SCHEDULE BA-1
BILLING ADJUSTMENTS

Applicable:

To the Rate Per Month provision in each of the Company's filed rate schedules which reference the billing adjustments set forth below.

COST RECOVERY FACTORS

Rate Schedule/Metering Level	Fuel Cost Recovery[1]			ECCR[2]		CCR[3]		ECRC[4]
	Levelized ¢/ kWh	On-Peak ¢/ kWh	Off-Peak ¢/ kWh	¢/ kWh	$/ kW	¢/ kWh	$/ kW	¢/ kWh
RS-1, RST-1, RSL-1, RSL-2, RSS-1 (Sec.)		3.854	2.537	0.325	-	1.523	-	0.184
< 1000	2.679							
> 1000	3.679							
GS-1, GST-1								
Secondary	2.973	3.871	2.548	0.268	-	1.171	-	0.181
Primary	2.943	3.832	2.522	0.265	-	1.159	-	0.179
Transmission	2.914	3.793	2.497	0.263	-	1.148	-	0.177
GS-2 (Sec.)	2.973	-	-	0.210	-	0.836	-	0.178
GSD-1, GSDT-1, SS-1*								
Secondary	3.008	3.916	2.578	-	0.98	-	4.24	0.180
Primary	2.978	3.877	2.552	-	0.97	-	4.20	0.178
Transmission	2.948	3.838	2.526	-	0.96	-	4.15	0.176
CS-1, CST-1, CS-2, CST-2, CS-3, CST-3, SS-3*								
Secondary	3.008	3.916	2.578	-	0.67	-	2.49	0.173
Primary	2.978	3.877	2.552	-	0.66	-	2.47	0.171
Transmission	2.948	3.838	2.526	-	0.66	-	2.44	0.170
IS-1, IST-1, IS-2, IST-2, SS-2*								
Secondary	3.008	3.916	2.578	-	0.84	-	3.39	0.175
Primary	2.978	3.877	2.552	-	0.83	-	3.36	0.173
Transmission	2.948	3.838	2.526	-	0.82	-	3.33	0.172
LS-1 (Sec.)	2.828	-	-	0.108	-	0.233	-	0.173
*SS-1, SS-2, SS-3								
Monthly								
Secondary	-	-	-	-	0.096	-	0.412	-
Primary	-	-	-	-	0.095	-	0.408	-
Transmission	-	-	-	-	0.094	-	0.404	-
Daily								
Secondary	-	-	-	-	0.046	-	0.196	-
Primary	-	-	-	-	0.046	-	0.194	-
Transmission	-	-	-	-	0.045	-	0.192	-
GSLM-1, GSLM-2	See appropriate General Service rate schedule							

(1) Fuel Cost Recovery Factor:
The Fuel Cost Recovery Factors applicable to the Fuel Charge under the Company's various rate schedules are normally determined annually by the Florida Public Service Commission for the billing months of January through December. These factors are designed to recover the costs of fuel and purchased power (other than capacity payments) incurred by the Company to provide electric service to its customers and are adjusted to reflect changes in these costs from one period to the next. Revisions to the Fuel Cost Recovery Factors within the described period may be determined in the event of a significant change in costs.

(2) Energy Conservation Cost Recovery Factor:
The Energy Conservation Cost Recovery (ECCR) Factor applicable to the Energy Charge under the Company's various rate schedules is normally determined annually by the Florida Public Service Commission for twelve-month periods beginning with the billing month of January. This factor is designed to recover the costs incurred by the Company under its approved Energy Conservation Programs and is adjusted to reflect changes in these costs from one period to the next. For time of use demand rates the ECCR charge will be included in the base demand only.

(Continued on Page No. 2)

ISSUED BY: Javier J. Portuondo, Director Rates & Regulatory Strategy – FL

EFFECTIVE: April 1, 2016

Item 5

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 18, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (Norris, Frank)
Division of Economics (Thompson)
Division of Engineering (Hill, King)
Office of the General Counsel (Barrera)

RE: Docket No. 150071-SU – Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.

AGENDA: 03/01/16 – Regular Agenda – Proposed Agency Action except for Issues 24 and 25 – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Patronis

CRITICAL DATES: 5-Month Effective Date Waived Through 03/01/16

SPECIAL INSTRUCTIONS: None

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Case Background

K W Resort Utilities Corporation (K W Resort or Utility) is a Class A Utility providing wastewater service to approximately 2,061 customers in Monroe County. Water service is provided by the Florida Keys Aqueduct Authority (FKAA). Rates were last established for this Utility in its 2007 rate case.[1] According to the Utility's 2014 Annual Report, the Utility had operating revenues of $1,479,307 and operating expenses of $1,199,672.

On July 1, 2015, K W Resort filed its application for the rate increase at issue. The Utility requested that the application be processed using the Proposed Agency Action (PAA) procedure. The test year established for final rates is the 13-month average period ended December 31, 2014.

The Utility's application did not meet the minimum filing requirements (MFRs). On July 30, 2015, staff sent K W Resort a letter indicating deficiencies in the filing of its MFRs. The Utility filed a response to staff's first deficiency letter on August 28, 2015. However, the Utility's response did not satisfy all of the deficiencies, and on September 16, 2015, staff sent a second letter indicating the outstanding deficiencies. On September 22, 2015, the Utility filed a response to staff's second deficiency letter correcting its remaining deficiencies, and thus the official filing date was established as September 22, 2015, pursuant to Section 367.083, Florida Statutes (F.S.).

In 2014, the Utility started the planning process of expanding its wastewater treatment plant (WWTP) from 0.499 million gallons per day (MGD) permitted capacity to 0.849 MGD permitted capacity to handle additional flows beyond the maximum capacity of its existing facilities. This pro forma plant project is being considered in the current case, and included the installation of two additional underground shallow injection wells for disposal of treated effluent. On June 23, 2014, the Department of Environmental Protection (DEP) issued a Notice of Intent to issue K W Resort a modified operating permit that would allow it to start its expansion. An environmental group, Last Stand, timely challenged the permit. Last Stand specifically opposes the installation of the shallow injection wells in favor of deep injection wells, a much costlier alternative. The case was referred to Florida's Division of Administrative Hearings (DOAH) on November 19, 2014.[2] A Recommended Order was issued by the case's Administrative Law Judge on January 15, 2016, in favor of DEP issuing the Utility's permit. However, there are still several steps remaining in the process before the case is officially closed, and the possibility of an appeal still remains. The Utility is seeking the recovery of the legal fees associated with the litigation. In addition, the Utility requested pro forma expenses associated with upgrading its operations to meet Advanced Wastewater Treatment (AWT) Standards required by Section 403.087(10), F.S.

The Utility asserts that it is requesting an increase to recover reasonable and prudent costs for providing service and a reasonable rate of return on investment, including pro forma plant improvements. Staff believes a two-phased rate increase is the most appropriate approach to include the Utility's pro forma plant expansion project. K W Resort is requesting final rates

[1] Order No. PSC-09-0057-FOF-SU, issued January 27, 2009, in Docket No. 070293-SU, *In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.*
[2] DOAH Docket No. 14-5302

designed to generate annual revenues of $2,931,759. This represents a revenue increase of $1,438,382 (96.32 percent).

The Office of Public Counsel (OPC) has filed two letters of concerns in the instant docket, one on July 9, 2015 and the other on September 10, 2015. In addition, Monroe County, one of the Utility's largest customers, has also actively monitored the case as an interested party. To date, the Commission has received six letters from customers regarding this case.

This recommendation addresses K W Resort's requested final rates. The 5-month effective date has been waived by the Utility through March 1, 2016. The Commission has jurisdiction pursuant to Section 367.081, F.S.

Discussion of Issues

Issue 1: Is the quality of service provided by K W Resort satisfactory?

Recommendation: Yes. Staff recommends that the quality of K W Resort's product and the condition of the wastewater treatment facilities is satisfactory. It appears that the Utility has attempted to address customers' concerns. Therefore, staff recommends that the overall quality of service for the K W Resort wastewater system in Monroe County is satisfactory. (Hill)

Staff Analysis: Pursuant to Rule 25-30.433(1), Florida Administrative Code (F.A.C.), in wastewater rate cases, the Commission shall determine the overall quality of service provided by a utility. This is derived from an evaluation of three separate components of the utility operations. These components are the quality of the utility's product, the operational conditions of the utility's plant and facilities, and the utility's attempt to address customer satisfaction. K W Resort's compliance with the Department of Environmental Protection (DEP) regulations, and customer comments or complaints received by the Commission, are also reviewed.

Quality of Utility's Product and Operating Conditions of the Utility's Plant and Facilities

K W Resort's service area is located in Monroe County. The wastewater treatment plant (WWTP) uses extended aeration to treat wastewater. Effluent is passed through a sand filter and disinfection is provided by chlorine gas. Effluent is disposed of through reuse service or shallow injection wells when reuse demand is not sufficient for reuse.

K W Resort is current in all of its required WWTP compliance inspections. Staff reviewed the compliance inspection reports dated September 29, 2014 and July 14, 2015. In its September 29, 2014 inspection report, DEP reported a minor out-of-compliance rating for sampling due to a failure to test field chlorine, uncalibrated refrigerator thermometers for chemical sample storage, and insufficient use of the chain of command form. In its July 14, 2015 inspection report, DEP reported an out-of-compliance rating for sampling due to missing details from daily calibration verifications and for chain of command forms not being returned for nutrient samples. DEP reported that adequate responses from the Utility were received for all issues. No subsequent compliance issues were reported by DEP.

A line break was reported to have occurred on December 21, 2015, which spilled 700 gallons of raw wastewater. The line break was due to a cracked PVC pipe at a check valve. K W Resort reported to DEP that the spill was contained, disinfected, and cleaned, and that the line was repaired and that an inspection of PVC pipe on all lift stations would be performed.

It appears that K W Resort has been responsive to the DEP's compliance requirements. Based on K W Resort's status with DEP, staff recommends that the quality of K W Resort's product and the operational condition of the WWTP is satisfactory.

The Utility's Attempt to Address Customer Satisfaction

In order to determine the Utility's attempt to address customer satisfaction, staff reviewed customer complaints and comments from five sources: the Commission's Consumer Activity

Tracking System (CATS), DEP, the complaints the Utility has recorded, the staff-conducted customer meeting, and all correspondence submitted to the Commission Clerk regarding this rate case. A summary of all complaints and comments received is shown in Table 1-1 below.

Table 1-1
Number of Complaints by Source

Subject of Complaint	PSC's Records (CATS) (test year and 4 prior years)	Utility's Records (test year and 4 prior years)	DEP (test year and 4 prior years)	Docket Correspondence	Customer Meeting
Billing Related	4	1	0	0	2
Opposing Rate Increase	0	0	0	4	4
AWT	0	0	0	0	2
Wastewater Odor	1	0	0	1	4
Impact Fees	0	0	0	2	5
Other	0	0	0	2	7
Total*	5	1	0	9	24

*A complaint may appear twice in this table if it meets multiple categories

A customer meeting was held in Key West, Florida, on December 10, 2015. Approximately 40 of the Utility's customers attended the meeting and 15 spoke. In addition, staff also reviewed complaints for the four years prior to the test year. The Commission received five complaints, DEP received no complaints, and the Utility recorded one for this time period. Based on the records of the Utility and the Commission, it appears that the Utility has responded in a timely manner to each of these complaints.

The subjects of the complaints included (1) billing issues, (2) affordability of the rate increase, (3) the historical application of AWT standards, (4) odor from the wastewater plant, (5) the burden of new construction on existing customers, and other issues. In addition to the individual comments, Mr. Joe O'Connell submitted a petition to the Commission on behalf of Safe Harbor Marina LLC and 55 signatories concerned with the odor and potential hydrogen sulfide emissions from the WWTP. The petition was filed on February 1, 2016, and requests that "the Environmental Health department [investigate the] health hazards and other long term effects caused by the noxious fumes created and emitting from the K W Resort sewer plant." Staff forwarded Mr. O'Connell's petition to DEP. The DEP wastewater compliance reports from September 29, 2014 and July 14, 2015 show no excessive odor at the time of inspection, which is consistent with staff's plant inspection on December 10, 2015. Staff has reviewed the Utility's responses to all Commission and Utility-kept complaints and has found that the Utility's attempt to address these concerns has been timely and appropriate.

Summary

Staff recommends that the quality of K W Resort's product and the condition of the wastewater treatment facilities is satisfactory. It appears that the Utility has attempted to address customers' concerns. Therefore, staff recommends that the overall quality of service for the K W Resort wastewater system in Monroe County is satisfactory.

Issue 2: Should the audit adjustments to rate base to which the Utility and staff agree be made?

Recommendation: Yes. Based on the audit adjustments agreed to by the Utility and staff, the following adjustments should be made to rate base as set forth in staff's analysis below. (Frank, Norris, Hill)

Staff Analysis: In its response to the staff audit report of the Utility, K W Resort agreed to the audit adjustments as set forth in the tables below.

Table 2-1
Description of Audit Adjustments

Audit Finding	Description of Adjustment
Audit Finding No. 1	This finding is due largely to the following: 1) to remove double entries to plant amounts already booked that were approved in the last rate case, 2) to reflect numerous reclassifications from plant to O&M expenses and CIAC, 3) to remove amounts due to lack of support documentation, and 4) to reflect plant retirements.
Audit Finding No. 2	This finding relates to the reclassification of certain plant amounts recorded by the Utility to CWIP in order to create a CWIP account to reflect the cost for the wastewater plant expansion project not in-service yet.
Audit Finding No. 3	This finding relates to the reclassification of survey fees recorded as land to Operations & Maintenance (O&M) expenses in accordance with the NARUC USOA and Rule 25-30.433(8), F.A.C.
Audit Finding No. 4	This finding is due largely to reflect CIAC amounts previously approved in the Utility's last rate case and to correct calculation errors by the Utility.
Audit Finding No. 5	This finding is due largely to reflect the corresponding adjustments to accumulated depreciation as a result of Audit Finding 1, in accordance with Rule 25-30.140, F.A.C.
Audit Finding No. 6	This finding is due largely to the reclassification of accounting and survey fees as an increase to miscellaneous deferred debits and to reduce the miscellaneous deferred debits related to the wastewater permit modification for lack of support documentation.

Source: Staff audit and Utility responses to staff data request

In response to Audit Finding No. 1, the Utility disagreed with the removal of $160,823 from plant and provided explanations and support for the inclusion of multiple transactions that occurred during 2007, 2008, and 2009. Staff agrees with the Utility's explanations and made the appropriate corresponding adjustments to increase plant and accumulated depreciation by $160,823 and $45,676, respectively. The corresponding adjustment to depreciation expense is reflected in Issue 10.

Based on the audit adjustments agreed to by the Utility and staff, staff recommends a net reduction to rate base of $249,537. The recommended adjustments to rate base are set forth in Table 2-2.

Table 2-2
Adjustments to Rate Base

Audit Finding	Plant	Land	Accum. Depr.	CIAC	Accum. Amort. of CIAC	CWIP	Working Capital	Total
1	($817,240)	$0	$0	$0	$0	$0	$0	($817,240)
2	0	0	0	0	0	303,099	0	303,099
3	0	(923)	0	0	0	0	738	(185)
4	0	0	0	297,120	(81,153)	0	0	215,967
5	0	0	(2,040)	0	0	0	0	(2,040)
6	0	0	0	0	0	0	24,217	24,217
7	0	0	0	0	0	0	26,645	26,645
Total	($817,240)	($923)	($2,040)	$297,120	($81,153)	$303,099	$51,600	($249,537)

Source: Staff audit and Utility responses to staff data request

Issue 3: Should any adjustments be made to the Utility's pro forma plant?

Recommendation: Yes. Pro forma plant should be decreased by $3,574,468 in Phase I. Corresponding adjustments should be made to decrease accumulated depreciation by $196,281 and depreciation expense by $196,281. Additionally, pro forma property taxes should be decreased by $35,696. (Hill, Norris)

Staff Analysis: In its filing, the Utility included pro forma plant of $3,574,468 for the expansion of its wastewater treatment plant, which includes the construction of two shallow injection wells. As will be discussed in Issue 16, staff is recommending a two-phased rate increase to address the Utility's pro forma plant request. Pro forma plant that has not been completed has been removed from Phase I. As such, pro forma plant should be decreased by $3,574,468 in Phase I. Corresponding adjustments should be made to decrease accumulated depreciation by $196,281 and depreciation expense by $196,281. Additionally, pro forma property taxes should be decreased by $35,696.

Issue 4: What are the used and useful (U&U) percentages of the Utility's wastewater treatment plant and wastewater collection system?

Recommendation: For Phase I rates, K W Resort's wastewater treatment plant and collection system should be considered 100 percent U&U. For Phase II rates, K W Resort's wastewater treatment plant should be considered 72 percent U&U and the wastewater collection system should be considered 100 percent U&U. No adjustments should be made for excessive infiltration and inflow (I&I). (Hill)

Staff Analysis: Based upon Rules 25-30.431, 25-30.432, and 25-30.4325, F.A.C., the Commission's U&U evaluation of a wastewater system includes consideration of the formula-based method and all relevant factors such as prior decisions, conservation, and change in customer base. The formula-based method calculates the customer demand as a percentage of capacity. The customer demand is based on the actual demand in the test period and the estimated demand over the 5-year statutory growth period. OPC commented that, if the Commission approved the Utility's requested 100 percent U&U with an historic test year, the Utility would likely be in an overearning position, but it did not provide any specific concerns regarding any of the Utility's requested adjustments.

Infiltration and Inflow

Rule 25-30.432, F.A.C., provides that in determining the amount of U&U plant, the Commission will consider I&I. Typically, infiltration results from groundwater entering a wastewater collection system through broken or defective pipes and joints; whereas, inflow results from water entering a wastewater collection system through manholes or lift stations. The allowance for infiltration is 500 gpd per inch diameter pipe per mile, and an additional 10 percent of water sold is allowed for inflow. In addition, adjustments to operating expenses such as chemical and electrical costs are considered necessary, if excessive. Schedule F-6 of the MFRs indicated there is no excessive I&I for the test year. Staff has reviewed the assumptions and calculations and believes that they are reasonable. Therefore, staff recommends that no adjustment should be made for excessive I&I.

Wastewater Collection System Used & Useful

The wastewater collection system consists of a gravity system as well as a vacuum collection system. The gravity collection system has been operating at capacity for the past five years and there is no apparent potential for additional gravity system connections. Therefore, pursuant to Rule 25-30.4325(4), F.A.C., the gravity collection system should be considered 100 percent U&U. The vacuum collection system is fully contributed; therefore there is no non-contributed plant to consider for U&U purposes. There will be no change to this consideration for Phase II.

Wastewater Treatment Plant Used and Useful Plant (Phase I)

In K W Resort's last rate case, the Commission deemed the Utility's WWTP to be 100 percent U&U. The Utility has not increased the capacity of its wastewater treatment facilities since its last rate case. Giving consideration to the Commission's decision in the Utility's last rate case, the WWTP should continue to be considered 100 percent U&U. Staff notes that the Utility is planning an expansion of its WWTP. The planned expansion is to be completed by December 2016, and is addressed as part of staff's recommended Phase II increase for pro forma items.

Wastewater Treatment Plant Used and Useful Plant (Phase II)

In Phase II, the DEP permitted plant capacity will increase to 849,000 gpd, and as a result, staff should calculate an updated WWTP U&U percentage. Pursuant to Rule 25-30.432, F.A.C., the U&U percentage of a WWTP is based on customer demand compared with the permitted plant capacity, with customer demand measured on the same basis as permitted capacity. K W Resort's WWTP is permitted on the basis of Annual Average Daily Flow. Consideration is also given for growth and I&I.

Section 367.081(2)(a)2., F.S. states that the commission should consider utility property to be considered used and useful if such property is needed to serve customers five years after the end of the test year unless the utility presents clear and convincing evidence that a longer period is justified.

A linear regression of the Utility's actual flows for the test year and prior four years results in an average of 7.06 percent annual growth. In its application, the Utility presented evidence that the expansion is needed because future growth will continue at this rate or higher for the next five years. In addition, the Utility stated that its 3-month annualized daily flow had exceeded current capacity in October of the test year, at which point the county would only issue dry permits. This has resulted in a suppression of growth, which would reduce the predicted growth using linear regression. The Utility also stated that building projects with Development Agreements already obtained from Monroe County were used to determine the size of the current plant expansion. Based on this information, the Utility projects that the system will be at full capacity within five years of completing the expansion, which would be seven years after the test year. The Utility therefore requested that growth be considered for seven years after the test year. Section 367.081(2)(a)2.b-c., F.S., allows such consideration when the Utility presents clear and convincing evidence to justify such consideration. Staff recommends that, while the Utility provided evidence of known future growth, no significant amount of growth was projected for any period beyond the default 5-year growth period. The Utility also requested that a growth allowance of 102,000 gpd be included in 2016 to account for the suppressed growth and known building projects currently underway or completed and awaiting connection. It is staff's position that the Utility has been optimistic that this projected growth will be above and beyond the historic growth, and staff recommends that a more conservative projection using only the linear regression would be more appropriate.

Staff agrees with the Utility that test year flows appear suppressed and that a growth rate of greater than 5 percent per year is supported. Staff recommends that the full 7.06 percent annual growth as calculated be allowed. Therefore, pursuant to Rule 25-30.431, F.A.C., a linear regression analysis of the Utility's historical growth patterns results in an addition of 1,310 ERCs for the 5-year statutory growth period. The Utility had an average of 4,039 ERCs for the test year, resulting in 114 gpd/ERC (461,323 gpd / 4,039 ERCs). Thus, a growth allowance of 149,647 gpd is also considered (1,310 ERCs x 114 gpd per ERC). Staff recommends that the Utility's requested 102,000 gpd allowance is well supported, but already accounted for in the growth allowance given by the linear regression.

Based on the annual average daily flow during the test year of 461,323 gpd, the current DEP permitted plant capacity of 849,000 gpd, the growth allowance of 149,647 gpd, the excessive I&I

of 0 gpd, staff recommends that the WWTP be considered 72 percent U&U [(461,323 gpd - 0 gpd + 149,647 gpd) / 849,000 gpd].

Conclusion

For Phase I rates, K W Resort's wastewater treatment plant and collection system should be considered 100 percent U&U. For Phase II rates, K W Resort's wastewater treatment plant should be considered 72 percent U&U and the wastewater collection system should be considered 100 percent U&U. No adjustments should be made for excessive I&I.

Issue 5: What is the appropriate working capital allowance?

Recommendation: The appropriate working capital allowance for Phase I is $721,268. As such, the working capital allowance for Phase I should be decreased by $645,964. (Norris)

Staff Analysis: Rule 25-30.433(2), F.A.C., requires that Class A utilities use the balance sheet method to calculate the working capital allowance. In its MFRs, K W Resort reflected a working capital allowance of $1,367,232. As addressed in Issue 2, several adjustments were made to working capital, resulting in an increase of $51,600. Staff believes additional adjustments are necessary for cash and deferred rate case expenses. In its letter dated September 10, 2015, OPC took issue with both the amount of cash and the total amount of working capital included in the Utility's filing.

Cash

In its filing, the Utility's working capital allowance included cash of $877,289. This amount included $126,930 associated with an escrow account related to holding escrow monies from capacity fees collected for the vacuum expansion project between Monroe County and K W Resort. In its response to Audit Request No. 17, the Utility clarified that the agreement with Monroe County was to end after 1,500 equivalent residential units had been collected and paid to Monroe County. As such, the account was closed on March 15, 2015, once the quota was met. Since ratemaking is prospective in nature, staff believes a normalization adjustment is necessary to remove the cash amounts associated with this closed escrow account. Thus, working capital should be reduced by $126,930.

The Utility also included another escrow account in cash working capital titled "Customer Escrow Account." Further review of the Utility's general ledger revealed that this account is for customer deposits. Customer deposits are a component of the Utility's capital structure and should not be included in working capital. The 13-month average of this account was $141,828. Therefore, working capital should be reduced by $141,828 to reflect the removal of customer deposits.

In May 2014 of the test year, the Utility opened another cash account that it considers a capital operating account with a balance of $375,840. The Utility stated that this account was created in order to pay for capital projects, instead of having to transfer from the operating account. In response to staff's second data request, the Utility stated that it will remain active and require a nearly $400,000 minimum necessary to ensure a proper capital budget may be undertaken each year to allow the Utility to operate properly. The Utility also provided a 3-year projection of capital projects. Staff has a number of concerns with this account in the test year.

First, the account was never drawn down on in the test year for its stated purpose. Because the balance of this account never changed throughout the test year, staff believes to allow a return in working capital for this account would be equivalent to creating temporary cash investment which provides no benefit to the ratepayers. In accordance with Commission practice, temporary cash investments should be removed from working capital.[3] As such, staff believes this account

[3] Order No. PSC-09-0057-FOF-SU, page 3, issued January 27, 2009, in Docket No. 070293-SU, *In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.*

should not be included for ratemaking purposes. Based on the 13-month average of this account, staff recommends that working capital should be reduced by $231,286

Further, the account was funded by a single transfer from the operating account in May 2014. Preceding this transfer, the balance of the operating account increased in January 2015 because of a $500,000 deposit. Based on the rationale for removing the capital operating account, staff believes it also necessary to remove this amount from the 13-month average balance operating account for the four months this amount remained there. Thus, working capital should also be decreased by $115,643 to reflect this removal.

In total, staff is recommending a total decrease of $615,687 to the Utility's working capital based on its cash component. This brings the Utility's cash balance to $261,602. This exceeds the cash balance of $42,155 approved in its last case. However, staff compared the average monthly O&M expense, including pro forma AWT operating expenses, to this balance and believes it is an appropriate balance.

Deferred Rate Case Expense

In its MFRs, K W Resort reflected deferred rate case expense of $62,400 in its working capital. As discussed in Issue 16, staff is recommending total rate case expense of $152,021. It is Commission practice to include one-half of the approved amount of rate case expense in the instant docket in working capital under the balance sheet method.[4] Consistent with Commission practice, staff calculated deferred rate case expense to include in working capital to be $76,011. As such, staff recommends that working capital be increased by $13,611.

Other Deferred Debits

As addressed in Issue 2, the Utility agreed to a working capital adjustment that reflected the actual, full amount of legal fees associated with Last Stand litigation as a deferred debit in the amount of $477,436. However, the balance included in working capital should reflect the total legal fees, verified by audit staff, less one year of amortization. As discussed in Issue 11, staff is recommending no further adjustments to the annual amortization of the deferred legal fees. Therefore, working capital should be decreased by $95,487 ($477,436 / 5).

Conclusion

Based on the adjustments above, staff recommends a working capital allowance for Phase I of $721,268. This reflects a decrease of $645,964 to the Utility's requested working capital allowance for Phase I.

[4] Order Nos. PSC-09-0057-FOF-SU, issued January 27, 2009, in Docket No. 070293-SU, *In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.*; PSC-04-0369-AS-EI, issued April 6, 2004, in Docket No. 030438-EI, *In re: Petition for rate increase by Florida Public Utilities Company*; and PSC-010326-FOF-SU, issued February 6, 2001, in Docket No. 991643-SU, *In re: Application for increase in wastewater rates in Seven Springs System in Pasco County by Aloha Utilities, Inc*.

Issue 6: What is the appropriate rate base for the test year period ended December 31, 2014?

Recommendation: Consistent with staff's other recommended adjustments, the appropriate rate base for the test year ended December 31, 2014, is $37,710 for Phase I. (Norris)

Staff Analysis: In its MFRs, the Utility requested a rate base of $4,362,997. Based on staff's recommended adjustments, the appropriate rate base is $37,710 for Phase I. Staff's adjustments recommended in the preceding issues result in a decrease of $4,325,287. The schedule for rate base is attached as Schedule No. 1-A, and the adjustments are shown on Schedule No. 1-B.

Issue 7: What is the appropriate return on equity?

Recommendation: Based on the Commission leverage formula currently in effect, the appropriate allowed return on equity (ROE) is 11.16 percent with a range of plus or minus 100 basis points. (Norris)

Staff Analysis: The Utility requested an ROE of 11.16 percent. Consistent with Commission practice, staff has set the Utility's negative common equity balance to zero.[5] Based on the Commission leverage formula currently in effect, the appropriate ROE is 11.16 percent.[6] Staff recommends an allowed range of plus or minus 100 basis points be recognized for ratemaking purposes.

[5] Order No. PSC-08-0652-PAA-WS, issued October 6, 2008, in Docket No. 070722-WS, *In re: Application for staff-assisted rate case in Palm Beach County by W.P. Utilities, Inc.*

[6] Order No. PSC-15-0259-PAA-WS, issued July 2, 2015, in Docket No. 150006-WS, *In re: Water and Wastewater Industry Annual Reestablishment of Authorized Range of Return on Common Equity for Water and Wastewater Utilities Pursuant to Section 367.081(4) (f), Florida Statutes.*

Issue 8: What is the appropriate weighted average cost of capital based on the proper components, amounts, and cost rates associated with the capital structure for the test year ended December 31, 2014?

Recommendation: The appropriate weighted average cost of capital for Phase I is 4.98 percent for the test year ended December 31, 2014. (Norris)

Staff Analysis: In its filing, K W Resort requested an overall cost of capital of 8.01 percent. Staff recommends two adjustments to the Utility's capital components included in its capital structure.

In its filing, the Utility included a pro forma adjustment to increase common equity by $3,500,000 to reflect the equity provided to fund the WWTP expansion. As addressed in Issue 16, staff is recommending that the pro forma plant expansion should be reflected in Phase II rates. As such, this pro forma adjustment to common equity should be reflected in the Phase II capital structure. However, removing the Utility's adjustment results in negative common equity for Phase I. As discussed in Issue 7, staff has set the Utility's common equity balance to zero in Phase I.

Additionally, staff reconciled rate base to capital structure pro rata over all sources of capital, including customer deposits. Although the Commission's practice is generally to only prorate over investor sources of capital, the instant case presented a unique situation due to customer deposits exceeding the recommended rate base for Phase I. As a result, the Utility's long-term debt component was negative in its weighted average cost of capital. As required by Section 367.081(2)(a)(1), F.S., the Commission must consider the Utility's cost of providing service, including debt interest. Not prorating over all sources of capital results in no consideration of the Utility's interest on debt. As such, staff recommends prorating over all sources of capital for Phase I.

Based upon the proper components, amounts, and cost rates associated with the capital structure, staff recommends a weighted average cost of capital for the test year ended December 31, 2014, of 4.98 percent for Phase I. Schedule No. 2 details staff's recommended overall cost of capital for Phase I.

Issue 9: What is the appropriate amount of test year revenues for K W Resort's wastewater system?

Recommendation: The appropriate test year revenues for K W Resort's wastewater system are $1,554,861. (Thompson)

Staff Analysis: In its MFRs, K W Resort reported test year revenues for wastewater of $1,479,307. Based on the staff audit, the Utility's test year revenues were increased by $75,554 to include (1) $19,550 of revenues related to cleaning the Monroe County Detention Center (MCDC) lift station; (2) $19,500 reimbursed to the Utility for testing of reclaimed water; (3) $22,849 of additional revenues from miscellaneous service charges; and (4) $13,655 to reflect corrected billing determinants and rates. The resulting test year wastewater revenues of $1,554,861 include $1,482,242 of service revenues and $72,619 of miscellaneous revenues.

Based on the above, staff recommends that the appropriate test year revenues for K W Resort's wastewater system, including miscellaneous revenues, are $1,554,861. Test year revenues are shown on Schedule No. 3-A**.**

Issue 10: Should the audit adjustments to operating expense to which the Utility and staff agree be made?

Recommendation: Yes. Based on the audit adjustments agreed to by K W Resort and staff, the following adjustments should be made to operating expense as set forth in staff's analysis below. (Norris)

Staff Analysis: In its response to the staff audit report and other correspondence, K W Resort agreed to the audit adjustments as set forth in the table below.

Table 10-1
Description of Audit Adjustments

Audit Finding	Description of Adjustment
Audit Finding No. 3	This finding relates to the reclassification of survey fees recorded as land to O&M expenses in accordance with the NARUC USOA and Rule 25-30.433(8), F.A.C.
Audit Finding No. 4	This finding is due largely to reflect CIAC amounts previously approved in the Utility's last rate case and to correct calculation errors by the Utility.
Audit Finding No. 5	This finding is due largely to reflect the corresponding adjustments to depreciation expense as a result of Audit Finding No. 1, in accordance with Rule 25-30.140, F.A.C.
Audit Finding No. 6	This finding is due largely to the reclassification of accounting and survey fees as an increase to miscellaneous deferred debits.
Audit Finding No. 10	This finding is due largely to removal of non-utility, duplicative, and out-of-period costs, as well as the reduction of expenses for lack of support documentation.
Audit Finding No. 11	This finding is due largely to the amortization of non-recurring expenses.

Source: Staff audit and Utility responses to staff data requests

Based on the audit adjustments agreed to by the Utility, staff recommends a net decrease to operating expense of $8,571. The recommended adjustments are set forth in Table 10-2.

Table 10-2
Adjustments to Operating Expense

Audit Finding	O&M Expense	Depreciation Expense	CIAC Amortization Expense	Total
3	$1,200	$0	$0	$1,200
4	0	0	14,003	14,003
5	0	(5,489)	0	(5,489)
6	(7,497)	0	0	(7,497)
10	(4,512)	0	0	(4,512)
11	(6,276)	0	0	(6,276)
Total	($17,085)	($5,489)	$14,003	($8,571)

Source: Staff audit and Utility responses to staff data requests

Issue 11: Should any adjustments be made to the Utility's pro forma expenses?

Recommendation: Yes. Pro forma O&M expense should be decreased by $10,028. A corresponding adjustment should be made to increase pro forma payroll taxes by $1,875. (Hill, Norris)

Staff Analysis: Staff has reviewed the Utility's filings and recommends several adjustments to pro forma expenses.

Changes in O&M Expenses Due to AWT Upgrade

The Utility requested pro forma expenses associated with upgrading its operations to meet Advanced Wastewater Treatment (AWT) Standards required by Section 403.087(10), F.S., with a deadline of January 1, 2016. Section 367.081, F.S., provides that the Commission shall approve rates for service which allow a utility to recover the full amount of environmental compliance costs. Recognizing that the requested expenses are needed for compliance with the Utility's DEP Permit, staff believes that K W Resort should be permitted recovery of reasonable and prudent expenses associated with the AWT upgrade.

In its filing, the Utility requested a total of $666,134 of pro forma O&M expense for estimated increases in the following expenses: salaries and wages, employee pension and benefits, general liability insurance, workmen's comp insurance, sludge disposal, purchased power, chemicals, materials and supplies, contractual services-engineer, contractual services-testing, contractual services-other, and miscellaneous. As addressed below, this request was subsequently increased to $708,511. In addition, the Utility requested a corresponding pro forma increase of $13,526 to payroll taxes. Staff's recommended adjustments are discussed below.

Salaries and Wages

In its filing, the Utility included a pro forma increase of $155,996 to salaries and wages expense for three additional field positions—a licensed operator, a system technician/mechanic, and a helper to assist with sludge removal. In response to staff's second data request, the Utility requested the addition of an administrative assistant, bringing the total request to $194,000. Staff believes the inclusion of the new field positions are reasonable based on the additional labor requirements necessary to meet AWT standards. The new administrative position is also reasonable given the additional administrative needs that will arise as a direct result of increased operations.

A comparative analysis was performed to examine the reasonableness of the requested salaries for the four positions. Staff used the American Water Works Association's (AWWA) 2012 Compensation Survey (CS)[7] to examine the reasonableness of the licensed operator's starting salary of $62,000. Given the level of knowledge and expertise needed by an operator familiar with the stringent requirements of AWT standards, staff compared the operator's requested salary to the maximum range of a Senior/Lead Wastewater Treatment Plant Operator in the AWWA CS and believes that it is reasonable. The AWWA CS does not have any positions

[7] Staff applied an index factor of 1.06 percent, calculated using Commission-approved indices from 2012-2016, to the 2012 AWWA salaries for comparison purposes.

comparable to the three additional positions requested by the Utility, so staff did a comparative analysis using salaries of the Utility's existing staff.

The job duties and responsibilities of the system technician/mechanic matched those of several field technicians already employed with the Utility. The position's starting salary of $42,000 fell within the range of the Utility's existing field technician salaries. Therefore, staff believes the salary is reasonable.

Staff believes the job duties and responsibilities of the helper needed for sludge removal fall in the lowest range of required skilled labor, as compared to the Utility's field technicians. As such, staff believes the Utility's requested salary of $40,000 is excessive. Staff recommends matching the salary of this position to that of the lowest field technician salary. Based on the hourly wages provided by the Utility, this would result in an annual salary of $35,360 (2,080 hours x $17). Thus, staff recommends a $4,640 decrease to the Utility's pro forma O&M expense.

For the administrative assistant position, staff also used the salaries of existing administrative positions for comparative purposes. The Utility described this position as an assistant to the existing administrative staff, which includes an Accounting and Administrative Specialist, Customer Service Manager, and part-time Clerical and Administrative Assistant. However, the requested salary exceeded that of the Customer Service Manager ($47,990) and Accounting and Administrative Specialist ($45,845).[8] Staff believes the level of job duties and responsibilities fall between that of the part-time Clerical and Administrative Assistant and the Accounting and Administrative Specialist. As such, staff believes the mid-point of those salaries is more in line with the salary of an additional Administrative Assistant. This results in a salary of approximately $40,000, which results in a recommended decrease of $10,000 to the Utility's pro forma O&M expense.

In total, staff recommends $179,360 of pro forma salaries and wages expense for three additional field positions and one additional administrative position. Staff recommends corresponding pro forma payroll taxes of $15,401.

Employee Pension and Benefits

The Utility included a corresponding pro forma increase of $42,762 to employee pension and benefits for the addition of three new positions in its filing. In response to staff's third data request, it increased the requested pro forma expense to $47,135 to reflect the additional expense associated with four new positions. The Utility's requested pensions and benefits expense is 24 percent of its requested salaries and wages expense. In comparison, pension and benefits expense was 16 percent of salaries and wages expense in the test year. Staff made multiple requests for the Utility's calculation of its estimate, but the additional support was never provided. As such, staff believes the additional pension and benefits expense should be based on the actual percentage of 16 percent. Thus, staff recommends $28,722 of pro forma employee pension and benefits expense.

[8] This reflects an annualized salary due to turnover in the test year.

Workmen's Comp Insurance

In its MFRs, the Utility included a pro forma increase of $25,555 for additional workman's comp insurance expense to cover, originally, three new positions. However, workman's comp insurance expense in the test year was only $20,729. Staff made multiple requests for the basis and calculation of the Utility's estimate. In response to staff's third data request, the Utility stated that it made a calculation in its original estimate and that the correct pro forma increase should have been $8,627. Although staff never received documentation supporting the Utility's estimate, it is reasonable to expect an increase in workman's comp insurance given the recommended new positions. Staff performed a comparative analysis of the corrected adjustment using the level of employment and workman's comp insurance expense in the test year. As such, staff believes $8,627 of pro forma workman's comp insurance expense is reasonable.

Miscellaneous Expense

The Utility also included $9,638 of pro forma miscellaneous expense associated with the upgrade in operations. In response to staff's third data request, the Utility provided calculations and explanations in support of the additional expense requested. The Utility included $1,083 in its request based on reimbursed expenses in the test year. Staff believes this amount should be removed from the Utility's estimate, as it does not relate to the upgrade in AWT operations. Staff believes one additional adjustment is necessary based on the Utility's estimate of additional payroll administrative costs. The Utility estimated $2,281 in additional expense by using a ratio of historic payroll to payroll administrative costs. Based on staff's calculation of this ratio in the test year, along with the recommended decrease in the Utility's requested pro forma salaries, pro forma expense should also be decreased by $1,341. Therefore, staff recommends $7,214 of pro forma miscellaneous expense.

Summary of AWT O&M Expenses

Based on the adjustments above, staff recommends a pro forma increase of $656,106 to O&M expense for upgraded operations associated with meeting AWT standards. This results in a decrease of $10,028 from the $666,134 requested amount in the MFRs. The Utility's revised pro forma expense request totaled $708,511. However, staff's adjustment is based on the request embedded in its original filing. A corresponding adjustment should be made to increase pro forma payroll taxes by $1,875. Staff's recommended pro forma expenses are shown in the table below.

Table 11-1
Pro Forma AWT O&M Expenses

Account No.	Description	Request per MFRs	Revised Request	Staff Recommended
701	Salaries & Wages-Employees	$155,996	$194,000	$179,360
704	Employee Pension & Benefits	42,762	47,135	28,722
711	Sludge Disposal	109,334	109,334	109,334
715	Purchased Power	42,900	42,900	42,900
718	Chemicals	224,741	224,741	224,741
720	Materials & Supplies	60	60	60
731	Contractual Services-Engineer	4,730	4,730	4,730
735	Contractual Services-Testing	20,673	20,673	20,673
736	Contractual Services-Other	28,557	28,557	28,557
757	Insurance-General Liability	2,752	2,752	2,752
758	Workmen's Comp Insurance	25,555	25,555	8,627
760	Advertising	(1,564)	(1,564)	(1,564)
775	Miscellaneous Expense	9,638	9,638	7,214
	Total	$666,134	$708,511	$656,106

Source: Utility's MFRs and responses to staff data request

Amortization of Last Stand Legal Fees

The Utility included a pro forma increase to miscellaneous expense of $103,917 for the amortization of legal fees the Utility incurred to defend an action filed by Last Stand, an environmental group with no affiliation to the Utility's customers. Last Stand's filing opposed the Utility's application for a major modification of its operating permit with the Florida Department of Environmental Protection (DEP). This modification, which is addressed in Issue 16, is needed to expand the current treatment facility in order to meet growing demands and includes the installation of two new shallow injection wells to accommodate the increased effluent volume. Pursuant to Rule 62-4.030, F.A.C., DEP may only issue a permit after it receives reasonable assurance that the installation will not cause pollution in violation of any of the provisions of Chapter 403, F.S., or the rules promulgated thereunder.

Last Stand contended that no such reasonable assurance was provided and stated that the goal of the litigation is to compel DEP to prevent discharge through shallow injection wells. Last Stand filed its petition with the intent to compel denial of the permit or its reissuance with the requirement that K W Resort install a deep injection well. Based on the Utility's calculations, the cost of the deep well would cost in excess of $7,000,000, potentially up to $9,000,000, raising the total cost of the plant expansion to $11.1 - $13.1 million. The Utility contends that it has vigorously defended the action to ensure the ratepayers obtain wastewater services at a reasonable rate.

The Utility requested to defer and amortize $519,585 of legal fees over the 5-year life of the permit and includes the associated amortization of $103,917 ($519,585 / 5) in miscellaneous expense. At the time of the Utility's initial filing, the Utility was waiting for the DOAH Administrative Law Judge (ALJ) to render a decision regarding the challenge to the Utility's

operating permit modification, along with motions for attorney's fees filed by both parties. The ALJ filed her Recommended Order on January 16, 2016, and recommended that the Utility's permit be issued. Although the ALJ denied the Utility's motion for attorney's fees based on the argument that the challenge was brought for an improper purpose, she did award the Utility attorney's fees, in the amount of $900, associated with the Last Stand's motion to compel.

The parties have a right to file exceptions to the Recommended Order with DEP within 15 days of the order being issued. As of the filing of this recommendation, Last Stand has filed a motion requesting additional time to file an exception. DEP has 90 days from the date that it receives the Recommended Order to issue a Final Order. After the Final Order is issued and docketed with the agency clerk, both parties have 30 days to appeal. There is no automatic stay of the Final Order unless a party requests it and the agency or the court grants the stay. The request for a stay does not toll the time for appeal. There is no provision for reconsideration of the Final Order. The appeal can take several months, and the parties may request or waive oral argument. In addition, there is no time limit for the District Court to issue an opinion. It may reverse the Final Order, affirm the Final Order, or remand the case back to the agency for further proceedings.

Accounting Standards Codification (ASC) No. 980-340-35-1 states that the rate actions of a regulator can provide reasonable assurance of the existence of an asset if it is probable that future revenue will result from inclusion of that cost in allowable costs for ratemaking purposes and, based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected level of similar future costs. Staff believes that the legal fees incurred by the Utility were justified given the potential rate impact of being forced to drill a deep injection well. Based on the ALJ's Recommended Order and stated motive of Last Stand, staff does not believe that there was negligence on behalf of the Utility that precipitated the ensuing administrative hearing.

As addressed in Issue 2, the Utility agreed to a reduction of $8,430 to the amortized expense based on staff's audited amount of actual legal fees. In response to staff's data requests, the Utility has updated the amount of legal/engineering fees for the permitting defense and provided an estimate to completion. The additional fees result in an increase of $7,605 and the estimate to completion is $31,228. The Utility originally provided audit staff with invoices to support the actual legal fees, as of the audit, under confidentiality. However, upon staff's subsequent requests, the Utility has refused to provide any invoices to support the additional legal fees, citing attorney-client privilege. As such, staff does not recommend including, at this time, any additional legal fees that were not audited by staff and, thus, recommends no change to the annual amortization of legal fees in the amount of $95,487 ($103,917 - $8,430), as recommended in Issue 2

As addressed in Issue 16, the Utility will submit actual construction costs for the pro forma plant items within 60 days of the in-service date. At such time, the Utility may also submit additional invoices to support any additional legal fees that it would like recognized as a deferred asset. This opportunity also allows staff to include an adjustment for the final judgement regarding the awarding of attorney's fees. Regardless of whether or not the litigation is complete, it will be the Utility's burden to support its expense with actual documentation.

Conclusion

Based on the adjustments above, staff recommends that pro forma O&M expense be decreased by $10,028. A corresponding adjustment should be made to increase pro forma payroll taxes by $1,875.

Issue 12: Should K W Resort's test year expenses be adjusted for management fees charged by Green Fairways?

Recommendation: Yes. Contractual services-management expense should be decreased by $60,000. (Norris)

Staff Analysis: In its MFRs, the Utility recorded contractual services-management expense of $60,000 in the test year for management services provided by Green Fairways, Inc. Green Fairways is owned and operated by the Utility's majority shareholder, Mr. William Smith. In its last case, the Green Fairways management fees were reduced from $60,000 to $30,000 based on the Utility's inability to provide specific support documentation relating to the actual amount of time Mr. Smith spent managing K W Resort.

Since the last case, the Utility has replaced contractual services with full-time employees including a President and Managers that supervise plant operations and maintenance. In the instant case, the Utility did not document the actual amount of time Green Fairways spent managing the Utility. Mr. Smith estimated that he spends approximately 25 percent of his time on Utility matters, a reduction from the 30 percent he estimated in the last rate case. Although his estimated management contribution has decreased, the Utility sought to justify the additional $30,000 by explaining that it was below the benchmark when compared to the increase in number of customers and inflation.

Staff finds that the majority of the management duties provided by Green Fairways are duplicative of the in-house officers and management the Utility has hired since its last rate case. These duties include: financial planning, and reviewing the treatment of customers, employees, and vendors. These employees also review the overall wastewater operations, plan for plant expansion, and deal with Commission rate and complaint matters. In its response to staff's second data request, the Utility provided the following description of the management services provided by Green Fairways: "Green Fairways supervises Mr. Johnson (the President) and is responsible for financing all debt obligations insuring the shareholder investment is secure and ensuring that any guarantees are paid in full by the Utility."

The Utility further explained that Mr. Smith has personally guaranteed loans to K W Resort due to the Utility not having income or credit sufficient to obtain such loans. The Utility contends that its ability to properly operate is dependent on a third party guarantee, such as Mr. Smith, and that his management fees are reasonable compared to those charged by most lenders. K W Resort also explained that WS Utilities, as the sole shareholder and largest creditor, requires outside management to review K W Resort's operations and to ensure that all debts are properly paid and that no security is jeopardized or personal guaranty put at risk. Based on the information provided, staff believes that Green Fairways provides services that primarily benefit Mr. Smith as a shareholder. Additionally, it does not provide true, independent third party oversight when the services are being provided by two related party individuals, Mr. Smith and his daughter, Leslie Johnson, who is also the wife of the Utility's President (Mr. Johnson). As such, staff does not believe this expense is necessary for the provision of regulated utility service. Thus, contractual services-management expense should be decreased by $60,000.

Issue 13: Should further adjustments be made to the Utility's O&M expense?

Recommendation: Yes. The O&M expense for the test year should be decreased by $13,003. (Norris)

Staff Analysis: Based on its review of test year O&M expense, staff recommends several adjustments to the Utility's O&M expense as summarized below.

Salaries & Wages

K W Resorts recorded total test year salaries and wages of $590,900 for employees and officers. Since its last case, the Utility has replaced contractual services with full-time employees. In an effort to examine the reasonableness of the Utility's salary levels, staff used multiple resources to examine the reasonableness of individual positions, including the American Water Works Association's (AWWA) 2012 Compensation Survey.[9] Only two positions fell above the maximum range in staff's comparison. However, due to turnover in multiple positions and an additional position added in the test year, an annualization adjustment for multiple positions would have offset any adjustment staff would have made to reduce the salaries of the two positions that exceeded the maximum range. As such, staff is recommending no further adjustments to salaries and wages expense.

Contractual Services-Engineering

In its MFRs, K W Resort reflected an expense of $9,132 for contractual services-engineering expense in the test year. This amount included a test year adjustment to increase the expense by $2,805 to reclassify erroneously coded expenses. As addressed in Issue 10, the Utility agreed to the removal and reclassification of the $2,805 adjustment to a deferred asset account. During its analysis of the Utility's pro forma plant project, staff noticed a 2014 Weiler Engineering invoice with a written correction to the breakdown of expenses between the pro forma expansion and regular engineering services provided to the Utility. The Utility failed to reflect this adjustment to contractual services-engineering expense in the test year. Therefore, staff recommends that contractual services-engineering expense be decreased by $653.

Contractual Services-Accounting

In its MFRs, K W Resort reflected an expense of $25,762 for contractual services-accounting in the test year. This amount included two test year adjustments to increase the expense by $12,350 for additional accounting services and $1,862 to reclassify erroneously coded expenses. As addressed in Issue 10, the Utility agreed to the removal and reclassification of the $1,862 adjustment to a deferred asset account.

In its response to staff's first data request, the Utility stated that the $12,350 adjustment was based on an additional hour of bookkeeping for 49.5 weeks at an hourly rate of $250 an hour due to the increase in transactions related to accounts payable, cash disbursements, and customer service. The $250 is based on the hourly rate charged by the Utility's accountant, Mr. Jeffrey Allen CPA, for additional work not included in his monthly service fee. For a fixed rate of $525 a month, Mr. Allen provides the following services: reviews the general ledger, reconciles bank

[9] Staff applied an index factor of 1.06 percent, calculated using Commission-approved indices from 2012-2016, to the 2012 AWWA salaries for comparison purposes.

statements and accounts receivables, reclassifies cash receipts, and prepares semi-annual regulatory assessment fee (RAF) reports. The Utility did not specify its basis for using 49.5 weeks.

Since it was classified as a test year adjustment, staff initially examined the accounting expense during the test year to verify that the adjustment was annualizing changes which occurred during the test year. Only one invoice in the test year, dated December 31, 2014, reflected additional accounting work associated with the Utility's monthly operations. An additional 3.5 hours were billed in December 2014 for entering accounting data in September through November of 2014. Additionally, the Utility's response to staff's first data request indicated that the increase in the expense for December 2014 was due to Mr. Allen performing fourth quarter accounting work in place of the Utility's in-house accountant who resigned with no immediate replacement. As discussed in Issue 12, this position was filled in 2015. Thus, the additional work performed in the test year does not warrant an adjustment to increase this expense on a going forward basis.

Although the increase did not merit a test year adjustment, staff additionally considered the adjustment as a pro forma expense given the Utility's justification of growth associated with its expansion. However, in response to staff's second data request the Utility stated that the increase in flows is not going to increase the prospective amount of transactions relative to the amount of flows received. Instead it cited justification of additional accounting services related to non-recurring situations such as post-rate case adjustments, special projects, and restatements made prior to this rate case. Therefore staff believes that contractual services-accounting expense should be decreased by $12,350.

Conclusion

Based on the above, staff recommends that O&M expense be decreased by $13,003 ($653 + $12,350).

Issue 14: What is the appropriate amount of rate case expense?

Recommendation: The appropriate amount of rate case expense is $152,021. This expense should be recovered over four years for an annual expense of $38,005. Therefore, annual rate case expense should be increased by $6,805 from the respective levels of expense included in the MFRs. (Frank, Norris)

Staff Analysis: In its MFRs, K W Resort requested $124,800 for current rate case expense. Staff requested an update of the actual rate case expense incurred, with supporting documentation, as well as the estimated amount to complete the case. On January 19, 2016, the Utility submitted its last revised estimate of rate case expense, through completion of the PAA process, which totaled $199,557. A breakdown of the Utility's requested rate case expense is as follows:

Table 14-1
K W Resort's Initial and Revised Rate Case Expense Request

	MFR B-10 Estimated	Actual	Additional Estimated	Revised Total
Legal Fees				
Friedman & Friedman, PA	$59,300	$31,673	$9,930	$41,603
Smith, Oropeza, & Hawks, PL	0	22,134	2,118	24,252
Accounting Fees				
Milian, Swain, & Associates	48,000	99,808	4,550	104,358
Jeffery Allen,	0	4,375	3,000	7,375
Engineering Fees				
M&R Consultants	8,000	7,533	1,500	9,033
Weiler Engineering Corp.	0	1,486	950	2,436
Filing Fee	4,500	4,500	0	4,500
Customer Notices, Printing, and Shipping	5,000	1,992	3,008	5,000
Travel	0	480	520	1,000
Total	$124,800	$173,981	$25,576	$199,557

Source: MFR Schedule B-10 and Utility responses to staff data requests

Pursuant to Section 367.081(7), F.S., the Commission shall determine the reasonableness of rate case expense and shall disallow all rate case expense determined to be unreasonable. Staff has examined the requested actual expenses, supporting documentation, and estimated expenses as listed above for the current rate case. Based on its review, staff believes the following adjustments to K W Resort's requested rate case expense are appropriate.

Friedman & Friedman, P.A. (F&F)

The first adjustment to rate case expense relates to K W Resort's legal fees. In its MFRs, the Utility included $59,300 in legal fees to complete the rate case. The Utility provided documentation detailing this expense through January 10, 2016. The actual fees and costs totaled $31,673 with an estimated $9,930 to complete the rate case, totaling $41,603.

F&F's actual expenses included the $4,500 filing fee. However, the Utility also included $4,500 in its MFR Schedule B-10, under "Public Service Commission – Filing Fee." Staff has left the filing fee under the filing fee line item and has removed the entry from legal fees to avoid double recovery of this fee.

According to invoices, the law firm of F&F identified and billed the Utility $1,188 related to the correction of MFR deficiencies. The Commission has previously disallowed rate case expense associated with correcting MFR deficiencies because of duplicate filing costs.[10] Consequently, staff recommends an adjustment to reduce F&F's actual legal fees by $1,188.

F&F's estimate to complete the rate case includes fees for 24.5 hours at $360/hr. and additional costs for photocopies and attending the Agenda Conference, totaling $555. Staff believes the full amount of the estimate to complete, $9,375, is reasonable. Accordingly, staff recommends that legal fees from F&F should be reduced by $5,688 ($4,500 + $1,188).

Smith, Oropeza, Hawks PL (SOH)

The second adjustment to rate case expense also relates to K W Resort's legal fees. In its MFRs, the Utility did not include any estimated rate case expense associated with SOH. However, the Utility subsequently provided documentation detailing expenses for two of SOH's attorneys, Bart Smith and Chris Oropeza, through December 16, 2015. The actual fees and costs totaled $22,134 with an estimated $2,118 to complete the rate case, totaling $24,252.

According to the Utility's response to the third data request, Mr. Smith's firm has represented the Utility for over five years and has in-depth familiarity with the on-going operations and legal issues of the Utility. Mr. Smith has provided his legal assistance to K W Resort in regards to inquires into the Last Stand litigation. Also, Mr. Smith assisted K W Resort in meeting with Monroe County staff to address concerns and present information as to the purpose of the rate case. In order to ensure the lowest cost for legal representation, K W Resort has utilized local counsel for these matters. Staff believes Mr. Smith's hours associated with assisting in responding to data requests involving the Last Stand Litigation and coordinating with Monroe County to address any concerns pertaining to the current rate case are reasonable. However, staff believes that any additional hours associated with processing this case are duplicative of Mr. Friedman's contribution to the rate case. Customers should not pay double the rate case expense for actions such as having two attorneys review a data request or attend a conference call with staff. Additionally, Mr. Smith included hours associated with "researching" different Commission functions such as the PAA process. The Utility has retained counsel, Mr. Friedman,

[10] Order Nos. PSC-05-0624-PAA-WS, issued June 7, 2005, in Docket No. 040450-WS, *In re: Application for rate increase in Martin County by Indiantown Company, Inc.;* and PSC-01-0326-FOF-SU, issued February 6, 2001, in Docket No. 991643-SU, *In re: Application for increase in wastewater rates in Seven Springs System in Pasco County by Aloha Utilities, Inc.*

with many years of experience with the Commission and customers should not pay additional rate case expense, at a higher hourly rate, for another attorney to learn Commission processes.

Adjustments to actual rate case expense should be made for time associated with work duplicative of Mr. Friedman's and related costs. As such, staff believes that $12,474 (32.4 hrs. x $385) be removed for Mr. Smith and $3,325 (13.3 hrs. x $250/hr.) be removed for Mr. Oropeza. An additional $570 of cost related to the duplicative work should also be removed.

Additionally, staff recommends an adjustment to the estimated cost to complete this case. SOH's estimate to completion included fees of 5.5 hours at $385/hr. totaling $2,118. Staff believes the reported 2.5 hours is appropriate for assisting with responses to the third data request as it relates to the Last Stand litigation. However, staff believes that estimated cost for review of staff recommendation and PAA Order is duplicative of the work of F&F. Accordingly, staff recommends that three hours, or $1,115 ($385/hr. x 3hrs.), be removed from estimated rate case expense. In total, staff recommends that legal fees and costs for SOH be reduced by $16,907 ($14,989 + $233 + $570 + $1,115) to reflect these adjustments.

Milian, Swain & Associates (MS&A)

The third adjustment relates to MS&A's actual and estimated accounting fees of $104,358, which was comprised of $99,808 in actual costs and $4,550 in estimated fees to complete the rate case as of January 4, 2016.

In regard to MS&A's actual expenses, staff reviewed the supporting documentation and identified 49.25 hours related to correcting deficiencies. As stated previously, the Commission has previously disallowed rate case expense associated with correcting MFR deficiencies because of duplicate filing costs. As such, staff recommends that $3,113 (20.75 hrs. x $150/hr.) should be removed for C. Yapp and $5,700 (28.5 hr. x $200/hr.) be removed for D. Swain. Accordingly, staff recommends that MS&A's actual accounting consultant fees be reduced by $8,813 ($3,113 + $5,700).

MS&A estimates that a total of 26 hours are needed to complete the case. According to MS&A's summary, the consultant estimated the following:

Table 14-2
MS&A's Estimated Hours to Complete Case

Est. Hours	Activity
10	Provide support to client – Responses to staff's data requests, including updates to rate case expense.
8	Review staff recommendations, testing recommended revenue requirements and resulting rates, including suppression calculations, and discuss with client.
8	Review PAA Order, testing final approved revenue requirements and resulting final rates, including suppression calculations, and discuss with client.
26	Total

Source: Utility's response to staff's third data request

MS&A included an additional 26 hours to complete the case from the filing of staff's recommendation to the completion of the PAA process. This consultant has worked with other Class A systems on numerous dockets before this Commission through the years. The consultant's familiarity with Class A utilities and this Commission led staff to believe that the request for eight hours to review staff's recommendation and eight hours to review the Commission's PAA order is excessive and unreasonable. Absent additional support, staff believes that a total of 9.5 hours is an ample amount of time to review staff's recommendation and the Commission's PAA Order. Accordingly, staff recommends 6.5 hours (3.25 hours for C. Yapp and 3.25 hours for D. Swain) be removed from estimated rate case expense.

In summary, staff recommends reducing estimated hours to complete from 26 to 19.5. As such, staff believes that $488 (3.25 hrs. x $150/hr.) should be removed for C. Yapp and $650 (3.25 hrs. x $200/hr.) be removed for D. Swain. Accordingly, staff recommends that accounting consultant fees be reduced by $1,138 ($488 + $650).

Jeffery Allen, PA

In its MFRs, the Utility did not include any estimated rate case expense associated with accounting services provided by Jeffery Allen, PA. However, the Utility subsequently provided documentation detailing the accounting services he provided, such as assisting with MFR preparation. The actual fees and costs for Mr. Allen's services totaled $4,375 with an additional $3,000 estimated to complete the rate case. The Utility provided invoices through July 31, 2015 to support the expense.

However, the descriptions of work performed on his invoices were vague in relation to the rate case, and staff requested further clarification. According to the Utility's response to staff's third data request, Mr. Allen's work performed in the months of February, March, and July was associated with the restatement of prior year's annual reports. As such, staff believes that 16.5 hours at $250 an hour, for a total of $4,125 should be removed as expense unrelated to the rate case.

Additionally, staff recommends an adjustment to the estimated cost to complete this case. Mr. Allen's estimate to complete included fees for 12 hours at $250/hr. Staff has yet to receive any

additional invoices from Mr. Allen detailing any work performed on data requests or any rate case matter since assisting in MFR preparation. As such, staff believes 12 hours estimated for data request responses is unsupported. Furthermore, staff believes the work performed when responding to data requests is duplicative of MS&A. Accordingly, staff recommends that 12 hours, or $3,000 ($250 x 12 hrs.), be removed from estimated rate case expense. In total, staff recommends that Mr. Allen's fees should be reduced by $7,125 ($4,125 + $3,000) to reflect these adjustments.

Engineering Consultant Fees – M&R Consultants

The Utility included $8,000 in its MFRs for M&R Consultants to provide consulting services for engineering-related schedules and responses to staff's data requests. The Utility provided support documentation detailing the actual expense through November 30, 2015. The actual fees and costs totaled $7,533 with an additional $1,500 estimated to complete the rate case. Staff believes the full amount of the estimate to complete, $1,500, for assisting with data requests and preparation for the Agenda Conference is reasonable. Therefore, staff recommends no adjustment.

Weiler Engineering Corp.

In its MFRs, the Utility did not include any estimated rate case expense associated with Weiler Engineering Corp. However, the Utility subsequently provided documentation detailing this expense through August 31, 2015. The actual fees and costs totaled $1,486, for work associated with MFRs and the first data request, with an estimated $950 to complete the rate case, totaling $2,436. Staff believes that since there were no invoices provided subsequent to the first data request, the Utility's estimate of $950 to complete the rate case is excessive and unreasonable. Accordingly, staff recommends that five hours or a total of $950 ($190 x 5 hrs.) be removed for estimated rate case expense.

Filing Fee

The Utility included $4,500 in its MFR Schedule B-10 for the filing fee. According to documentation provided by F&F, the filing fee of $4,500 was paid as part of the legal fees. Since the amount is already included in the line item for filing fee, staff removed $4,500 from F&F's legal fees to avoid double recovery of this fee.

Customer Notices, Printing, and Shipping

In its MFRs, K W Resort included estimated costs of $5,000 for printing and shipping. The Utility is responsible for sending out three notices: the initial notice, customer meeting notice, and notice of the final rate increase. The Commission has historically approved recovery of noticing and postage, despite the lack of support documentation, based on a standard methodology to estimate the total expense using the number of customers and the estimated per unit cost of envelopes, copies, and postage.[11] However, the Utility provided the support documentation needed to verify the actual costs associated with two notices. According to the invoices, costs for the initial notice and customer meeting notice totaled $1,476. The Utility did

[11] Order No. PSC-14-0025-PAA-WS issued January 10, 2014, in Docket No. 120209-WS, *In re: Application for increase in water and wastewater rates in Marion, Orange, Pasco, Pinellas, and Seminole Counties by Utilities, Inc. of Florida.*

not provide an update for estimate to completion. Based on the total cost for the first two notices, staff believes a reasonable estimate for the final notice is $738 ($1,476 / 2).

K W Resort also provided two Fed Ex invoices totaling $194, and an Office Max receipt totaling $322. Staff reviewed the invoices and believes these costs are reasonable. As such staff recommends actual and estimated rate case expense related to customer notices, printing, and shipping to be $2,730 ($1,476 + $738 + $194 + $322). Accordingly, staff recommends that a total of $2,270 ($5,000 - $2,730) be removed for estimated rate case expense.

Travel

In its MFRs, the Utility did not include any estimated rate case expense associated with travel. However, the Utility subsequently provided documentation detailing this expense through December 11, 2015. The actual fees and costs totaled $480 with an additional $520 estimated to complete the rate case. According to an invoice provided, Mr. Johnson booked air travel from Key West to Tallahassee in the amount of $480 in order to attend the Agenda Conference. The Utility estimates an additional $520 in travel which includes costs for a hotel reservation, transportation to and from the airport, and meals. Staff believes the actual and estimated cost for travel is reasonable and therefore recommends no adjustment

Conclusion

Based upon the adjustments discussed above, staff recommends that K W Resort's revised rate case expense of $199,557 be decreased by $47,536, or an increase of $27,221 based on K W Resort's original request, to reflect staff's adjustments, for a total of $152,021. A breakdown of staff's recommended rate case expense is as follows:

Table 14-3
Staff Recommended Rate Case Expense

Description	MFR Estimated	Utility Revised Act.& Est.	Staff Adjustment	Recom. Total
Legal Fees	$59,300	$65,855	($21,824)	$37,476
Accounting Consultant Fees	48,000	111,733	47,796	95,796
Engineering Consultant Fees	8,000	11,469	2,519	10,519
Filing Fee	4,500	4,500	0	4,500
Customer Notices, Printing, and Shipping	5,000	5,000	(2,270)	2,730
Travel	0	1,000	1,000	1,000
Total	$124,800	$199,557	$27,221	$152,021

Source: MFR Schedule B-10 and responses to staff data requests

In its MFRs, the Utility requested total rate case expense of $124,800. When amortized over four years, this represents an annual expense of $31,200. The recommended total rate case expense of $152,021 should be amortized over four years, pursuant to Section 367.081(6), F.S. This

represents an annual expense of $38,005. Based on the above, staff recommends that annual rate case expense be increased by $6,805 ($38,005 - $31,200).

Issue 15: What is the appropriate Phase I revenue requirement for the test year ended December 31, 2014?

Recommendation: Staff recommends the following revenue requirement be approved.

Test Year Revenue	$ Increase	Revenue Requirement	% Increase
$1,554,861	$683,185	$2,238,046	43.94%

(Norris)

Staff Analysis: In its filing, K W Resort requested a revenue requirement to generate annual revenue of $2,931,759. This requested revenue requirement represents a revenue increase of $1,438,382, or approximately 96.32 percent.

Consistent with staff's recommendations concerning rate base, cost of capital, and operating income issues, staff recommends approval of rates designed to generate a revenue requirement of $2,238,046. Staff's recommended revenue requirement of $2,238,046 is $683,185 greater than staff's adjusted test year revenue of $1,554,861 or an increase of 43.94 percent. Staff's recommended pre-repression revenue requirement will allow the Utility the opportunity to recover its expenses and earn a 4.98 percent return on its investment in rate base.

Issue 16: Should the Commission approve a Phase II increase for pro forma items for K W Resort?

Recommendation: Yes. The Commission should approve a Phase II revenue requirement associated with pro forma items. The Utility's Phase II revenue requirement is $2,485,904 which equates to an 11.07 percent increase over the Phase I revenue requirement.

Implementation of the Phase II rates is conditioned upon K W Resort completing the pro forma items within 12 months of the issuance of the Final Order. The Utility should be allowed to implement the rates recommended on Schedule No. 8 once all pro forma items have been completed and the DEP has issued its approval for the expansion project to go into service. Once verified by staff, the rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. The rates should not be implemented until notice has been received by the customers. K W Resort should provide proof of the date notice was given within 10 days of the date of the notice. If the Utility encounters any unforeseen events that will impede the completion of the pro forma plant items, the Utility should immediately notify the Commission, in writing, in advance of the deadline, so as to allow the Commission ample time to consider an extension.

Further, staff recommends that the Utility be required to submit a copy of the final invoices and support documentation for the pro forma plant items within 60 days of the in-service date. In addition, the Utility should submit documentation of all CIAC that has been collected since the test year. If the actual costs are greater than the recommended Phase II amounts, the Utility should be afforded the opportunity to request an additional increase, in writing, which the Commission should consider. If the actual costs are less than the recommended amounts, staff will file a subsequent recommendation to address the appropriate action to be undertaken. (Norris, Hill)

Staff Analysis: As discussed in Issue 3, K W Resort included $3,574,468 for wastewater pro forma plant additions in its original filing. While staff believes K W Resort has provided reasonable documentation and justification for these projects, staff made adjustments to reflect the differences between what was provided in the MFRs, the estimated bids for the pro forma projects, and actual invoices received.

Phase II Rate Base

Pro Forma Plant-WWTP Capacity Expansion

In 2013, the maximum 3-month average daily flow was at 91 percent of the 0.499 million gallons per day (MGD) permitted capacity. When 3-month average daily flow will equal or exceed permitted capacity within the next six months, the Utility is required to submit an application to DEP for a construction operating permit to expand. In April 2014, K W Resort submitted an application to DEP to increase the processing capacity of the WWTP by .350 MGD based on known flows through 2013. In June 2014, the DEP issued an "Intent to Issue" a construction permit. By October 2014, the actual 3-month average daily flow had reached 102 percent of the permitted capacity. Staff has reviewed three bids for this project and has estimated the project cost to be $3,489,234 for the treatment plant and $85,234 for the collection system. The table below illustrates these estimates.

Table 16-1
Pro Forma Wastewater Plant Adjustments

Project	MFR Amount	Revised Amount
Expansion WWTP	$3,489,234	$3,396,479
Expansion Collection System	$85,234	$85,494
Total	$3,574,468	$3,481,973

Source: Utility MFRs and Utility responses to staff data requests

Staff believes a two-phased rate increase is the most appropriate approach to include the Utility's pro forma plant expansion project for a number of reasons. The majority of the project has not been completed and will not be completed for nearly a year. Given the financial magnitude of the pro forma plant project and its impact on rates, staff believes it is unreasonable to include the project until it is placed in-service. However, staff is recommending recognition of the Utility's expenditures on the plant expansion through 2015 in Construction Work in Progress (CWIP), as addressed in Issue 2.

Additionally, although the Utility's latest timeline estimates that the project will be completed by December 2016, this timeline does not take into account the possibility of an extended challenge to its operating permit that could potentially delay the construction of the two shallow injection wells. As discussed in Issue 11, there is no automatic stay of the Final Order unless a party requests it and the agency or the court grants the stay. Thus, the Utility could conceivably proceed with the installation of the two shallow injection wells even in the event of an appeal. However, the possibility remains that the Final Order could be reversed or the case remanded back to DOAH for additional proceedings that could compel the Utility to pursue a modified plan. If that event were to occur after or during the installation of the shallow injection wells, the Utility could potentially face a situation in which it has to make additional plant expenditures that are duplicative of those requested in the instant docket. Although the Utility believes that the probability of a successful appeal from Last Stand is low, staff believes that its recommendation should rely on the finality of the proceedings and not on probability. As such, staff's recommendation of a two-phased increase also takes into consideration the anticipated conclusion of the proceedings.

Staff recognizes that two-phased rate increases for water and wastewater utilities have been traditionally applied by the Commission in staff-assisted rate cases. However, given the unique circumstances of the instant case, staff believes a two-phased rate increase is appropriate in this instance to balance the interests of both the Utility and its customers. As such, staff recommends that pro forma plant be increased by $3,489,234 and CWIP be decreased by $303,999 in Phase II. Corresponding adjustments should be made to increase accumulated depreciation by $191,289. Depreciation expense should also be increased by $191,289. Additionally, pro forma property taxes should be increased by $31,875.

As mentioned in the Case Background, Monroe County, one of the Utility's largest customers, has actively monitored the case as an interested party. On February 5, 2016, a representative for the County provided staff with two letters from K W Resort to two existing customers regarding the reassessment and attempted collection of capacity fees after the test year. Based on concerns

regarding the Utility's contribution level, as further addressed in Issue 23, staff believes that the Utility should submit documentation of all CIAC that has been collected since the test year when it submits documentation of pro forma plant. Staff will bring before the Commission any potential issues with CIAC, if necessary.

Used & Useful

As addressed in Issue 4, K W Resort's wastewater treatment plant should be considered 72 percent U&U and the wastewater collection system should be considered 100 percent U&U in Phase II. To reflect the appropriate U&U percentages in Phase II, staff recommends that plant be decreased by $2,183,032, accumulated depreciation be decreased by $827,703, CIAC be decreased by $197,960, and the accumulated amortization of CIAC be decreased by $86,713. Corresponding adjustments should be made to decrease depreciation expense and amortization expense by $117,108 and $10,998, respectively. As such, rate base should be decreased by $1,244,082 (-$2,183,032 + $827,703 + $197,960 - $86,713) and net depreciation expense should be decreased by $106,110 (-$117,108 + $10,998).

Working Capital

Based on the projected timeline to completion, Phase II rates should reflect an additional year of amortization of its deferred Last Stand legal fees. As discussed in Issue 5, staff decreased Phase I working capital by $95,487 to reflect the first year of amortization. As such, working capital in Phase II should be decreased by an additional $95,487 to reflect an additional year of amortization. As recommended in Issue 11, additional Last Stand legal expenses could potentially be recognized as an additional deferred asset upon submission of support documentation in Phase II.

Rate Base Summary

The adjustments above increase Phase I rate base by $1,648,015. Thus, Phase II rate base is $1,685,725 ($37,710 +$1,648,015) as shown on Schedule No. 5-A.

Cost of Capital

Staff recommends two additional adjustments to the Utility's capital structure. As addressed in Issue 8, staff believes the Utility's pro forma adjustment to common equity should be reflected in Phase II. As such, staff recommends an increase to the common equity balance of $3,500,000 in Phase II to reflect the equity provided to fund the WWTP expansion. In addition, staff does not recommend reconciling rate base to capital structure pro rata over all sources of capital as it did in Phase I. The pro forma plant included in Phase II increases rate base substantially. Therefore, it is appropriate for customer deposits to be specifically identified and rate base to be reconciled to the capital structure over investor sources of capital. Based on the Commission leverage formula currently in effect, the appropriate ROE is 9.36 percent,[12] with a range of plus or minus 100 basis points. The resulting overall cost of capital is 7.64 percent as shown on Schedule No. 6.

[12] Order No. PSC-15-0259-PAA-WS, issued July 2, 2015, in Docket No. 150006-WS, *In re: Water and Wastewater Industry Annual Reestablishment of Authorized Range of Return on Common Equity for Water and Wastewater Utilities Pursuant to Section 367.081(4) (f), Florida Statutes.*

Operating Expenses

Phase II operating expenses are $2,357,038 ($2,236,168 + $109,717) as shown on Schedule No. 7-A. This amount reflects an additional $85,179 in depreciation expense and an additional $35,691 in taxes other than income associated with the pro forma plant additions.

Conclusion

The Utility's Phase II revenue requirement is $2,485,904 which equates to an 11.07 percent increase over the recommended Phase I revenue requirement. Phase II rate base and rate base adjustments are shown on Schedule Nos. 5-A and 5-B. The capital structure for Phase II is shown on Schedule No. 6. The NOI and NOI adjustments are shown on Schedule Nos. 7-A and 7-B. The resulting rates are shown on Schedule No. 8.

Implementation of the Phase II rates is conditioned upon K W Resort completing the pro forma items within 12 months of the issuance of the Final Order. The Utility should be allowed to implement the rates recommended on Schedule No. 8 once all pro forma items have been completed and the DEP has issued its approval for the expansion project to go into service. Once verified by staff, the rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. The rates should not be implemented until notice has been received by the customers. K W Resort should provide proof of the date notice was given within 10 days of the date of the notice. If the Utility encounters any unforeseen events that will impede the completion of the pro forma plant items, the Utility should immediately notify the Commission, in writing, in advance of the deadline, so as to allow the Commission ample time to consider an extension.

Further, staff recommends that the Utility be required to submit a copy of the final invoices and support documentation for the pro forma plant items within 60 days of the in-service date. In addition, the Utility should submit documentation of all CIAC that has been collected since the test year. If the actual costs are greater than the recommended Phase II amounts, the Utility should be afforded the opportunity to request an additional increase, in writing, which the Commission should consider. If the actual costs are less than the recommended amounts, staff will file a subsequent recommendation to lower the Phase II rates for the incremental decrease.

Issue 17: What are the appropriate rate structures and rates for K W Resort's wastewater system?

Recommendation: The recommended rate structures and monthly wastewater rates are shown on Schedule No. 4. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates and discontinuance of reading customer meters. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice. (Thompson)

Staff Analysis: K W Resort provides wastewater service to approximately 1,604 residential customers and 457 general service customers, including multifamily customers and marinas. The Florida Keys Aqueduct Authority (FKAA) provides water service to the Utility's customers and gives the Utility the water billing data on a monthly basis. The Utility's tariff contains rates for residential and general service customers, as well as separate rates for marinas, pool facilities, private lift station owners, and temporary service for dewatering sludge loads. The current rate structure and rates have been developed as a result of a prior complaint docket,[13] several requests for a new class of service,[14] as well as the last rate case.[15]

According to the Utility's MFRs and billing data, the Utility's billing practice for several general service customers is inconsistent with its approved tariff. Staff will address whether the Utility should be ordered to show cause why it should not be fined for charging rates that are inconsistent with its tariff in a subsequent proceeding. Some examples are noted below:

- Safe Harbor Marina is billed a negotiated rate, rather than the approved bulk flat rate.

- Sunset Marina is billed base facility charges (BFCs) based on an 8" and a 2" meter, the Utility's approved gallonage charge based on water demand, the approved charge for two pools, as well as an additional 64 BFCs based on the number of units behind the meter.

- Marinas with 2" meters are billed based on an approved bulk flat rate that includes BFCs for a 2" meter and six residential units, as well as a gallonage charge that was erroneously

[13]Order No. PSC-02-1165-PAA-SU, issued August 26, 2002, in Docket No. 020520-SU, *In re: Complaint by Safe Harbor Marina against K W Resort Utilities Corp. and request for new class of service for bulk wastewater rate in Monroe County.*

[14]Order Nos. PSC-95-0335-FOF-SU, issued March 10, 1995, in Docket No. 941323-SU, *In re: Request for approval of a new class of service in Monroe County by K W Resort Utilities Corporation;* PSC-99-0489-FOF-SU, issued March 8, 1999, in Docket No. 970229-SU, *In re: Application for limited proceeding increase in reuse water rates in Monroe County by K W Resort Utilities Corp.*;. PSC-02-1711-TRF-SU, issued December 9, 2002, in Docket No. 021008-SU, *In re: Request for approval of two new classes of bulk wastewater rates in Monroe County by K W Resort Utilities Corp.*; and PSC-05-0955-TRF-SU, issued October 7, 2005, in Docket No. 050474-SU, *In re: Request for approval of new class of bulk wastewater rates in Monroe County by K W Resort Utilities Corp.*

[15]Order No. PSC-09-0057-FOF-SU, issued January 27, 2009, in Docket No. 070293-SU, *In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.*

added to the bulk rate tariff as a result of an administrative approval of a 2011 price index.

- One general service customer with a 6" meter is billed the BFC for a 5/8"x3/4" meter for each of the 103 units.

- Another general service customer with a 5/8"x3/4" meter is billed the BFC for a 5/8"x3/4" meter for 49 units.

According to the Utility, several general service customers have installed their own meter behind the FKAA meter so that their wastewater bill would be based on only the water that returns to the wastewater system (excluding water used for washing boats, etc.). At the customer's request, the Utility has been reading the customer-owned meters instead of using the FKAA data. However, K W Resort expressed concern about whether the customer-owned meters are properly calibrated. In other instances, K W Resort reads customer-owned meters and deducts that reading from the FKAA meter reading to address the issue of water use that is not returned to the wastewater system.

On February 10, 2016, pursuant to an informal request by staff, the Utility provided a revised Schedule E-2 and supporting documentation, including a list of general service customers and details regarding how each customer was billed during the test year. The analysis also contains further adjustments to the billing determinants in Schedule E-2 to reflect the billing determinants based on customer meter size.

The following is a description of each of the Utility's currently approved rate structures.

Residential Service and General Service Rate Structures

Prior to the Utility's last rate case, the Utility charged its residential customers a flat rate. However, in the last rate case, the Commission approved a residential rate structure that is typical of most wastewater utilities, including a BFC, regardless of meter size, and a gallonage charge based on water demand with a 10,000 gallon per month cap. According to the prior order, water use information was previously not available from the FKAA; however, in the last rate case, the Utility indicated that the data would be available on a going-forward basis.[16]

The Utility's general service rate structure includes a BFC based on the size of the customer's water meter and a gallonage charge based on water demand. The gallonage charge is 20 percent higher than the residential gallonage charge to reflect that the majority of the general service water is returned to the wastewater system.

Flat Bulk Rate Structure for Marinas and Pools

In the Utility's last rate case, the Commission approved flat bulk rates for Safe Harbor Marina and South Stock Island Marina based on the estimated number of equivalent residential connections (ERCs) for each marina. For example, residential units were considered one ERC, live aboard boats were considered .6 ERCs, etc. The rates had previously been set as a result of a

[16] Order No. PSC-09-0057-FOF-SU

complaint by Safe Harbor and the Utility's request for a new class of service,[17] and the Utility's request for a new class of service for South Stock Island.[18] The Safe Harbor order noted that the Utility was charging the marina a flat rate for the unmetered bar and restaurant that had not been approved by the Commission and noted staff's belief that K W Resort was billing discriminatory rates to Safe Harbor. The bulk rates for the marinas reflect a discount because the marinas own and maintain their lift stations.

It should be noted that the Utility also has an approved tariff for customers who own and maintain their own lift station; but those rates are consistent with the Utility's approved general service rates and do not include a discount to reflect that the customer owns and maintains the lift station. The Utility does not currently bill any of its customers based on this tariff even though the Utility states there are approximately 20 customers that own and maintain their own lift station.

The Utility's initial MFRs in the current rate case included a flat bulk rate for Safe Harbor Marina that was inconsistent with the Utility's approved tariff. In response to a staff data request, the Utility indicated that subsequent to the Utility's last rate case, the Utility "entered into an agreement with Safe Harbour Marina whereby the Utility would continue to charge the $1,650.67, not the lower $947.00" approved in Order No. PSC-09-0057-FOF-SU. According to the Utility, there has been major redevelopment on the property placing greater demand on the system than reflected by the current meter size.

In addition, during a review of the Utility's tariff, staff discovered that as a result of a 2011 price index filing, a gallonage charge was inadvertently added to the Utility's approved tariff for South Stock Island Marina. This gallonage charge had not been approved by the Commission, and was in addition to approved the flat bulk rate. The Utility subsequently began billing South Stock Island Marina the flat bulk rate as well as the gallonage charge that was incorporated in the tariff as a result of the price index.

The Utility also has approved flat rates for swimming pools. A small pool is considered 1.18 ERCs and a large pool, which includes a clubhouse, is 4 ERCs. The flat rates were originally approved in Docket No. 021008-SU, as a result of a request for a new class of service. following staff's discovery that the Utility was charging an unauthorized charge during its review of the Utility's 2002 Price Index filing. According to the order, the Utility was not ordered to show cause why it should not be fined for failure to apply for a new class of service because (1) the Utility was cooperative in providing the necessary information, (2) the Utility assured the Commission that the revenues were included in the Utility's annual reports and the appropriate Regulatory Assessment Fees were paid, and (3) the Commission found that the Utility thoroughly understood the requirements for applying for a new class of service and the need to not initiate new classes of service without notifying the Commission in a timely manner.

[17]Order No. PSC-02-1165-PAA-SU, issued August 26, 2002, in Docket No. 020520-SU, *In re: Complaint by Safe Harbor Marina against K W Resort Utilities Corp. and request for new class of service for bulk wastewater rate in Monroe County.*
[18]Order No. PSC-05-0955-TRF-SU, issued October 7, 2005, in Docket No. 050474-SU, *In re: Request for approval of new class of bulk wastewater rates in Monroe County by K W Resort Utilities Corp.*

Temporary Service Agreements for Dewatering Sludge Loads

The Utility also has an approved tariff for temporary service agreements for dewatering sludge loads. The original tariff was approved in Docket No. 021008-SU, as a result of a request for a new class of service. As described above, and the Utility was not previously ordered to show cause why it should not be fined for failure to apply for a new class of service. A septic tank pumping company was collecting sludge from several commercial customers and dewatering the sludge to reduce the amount of waste that had to be transported for further processing. The Utility received and treated the effluent that resulted from the dewatering process. The Utility no longer provides this service; therefore, no revenues were collected during the test year. According to the Utility, the tariff for temporary service agreements for dewatering sludge loads is no longer needed.

Summary

In its MFRs, the Utility's proposed rates reflect the existing rate structure with across-the-board increases for each of the rates. The Utility did not provide any other rate design analysis to justify its proposed rates.

Staff performed an analysis of the Utility's billing data to evaluate various BFC cost recovery percentages and gallonage caps for the residential customers. In addition, staff evaluated whether the Utility's current rate structure and billing practice are just, reasonable, compensatory, and not unfairly discriminatory pursuant to Section 367.081(2), F.S. The goal of the evaluation was to select the rate design parameters that (1) produce the recommended revenue requirement, (2) equitably distribute cost recovery among the Utility's customers, and (3) implement a gallonage cap that considers approximately the amount of water that may return to the wastewater system.

Based on staff's review of the Utility's approved tariff and billing data, as well as prior dockets addressing the Utility's rate structure, staff recommends that the Utility's general service rate structure be redesigned to reflect a rate structure that is consistent with other wastewater utilities regulated by the Commission. While the Utility had difficulty obtaining metered water usage information from FKAA in the past, that information is now available for all of K W Resort's customers. The Utility provided adjusted billing determinants, which reflect residential and general service bills based on meter size and gallons. In addition, staff made an adjustment to reflect the appropriate number of residential gallons at the cap. These adjusted billing determinants should be used to develop final rates. All customers should be billed based on the billing data received from FKAA. The Utility should not be responsible for reading customer-owned meters. If a customer has concerns about meter sizes or deduct meters, the customer's recourse is with the FKAA.

The Commission's standard practice is to allocate at least 50 percent of the wastewater revenue to the BFC due to the capital intensive nature of wastewater plants. Staff recommends that the Utility's rates be designed to recover 50 of its revenue from the BFC. Further, staff recommends that, consistent with the Utility's currently approved rate structure, all residential customers should be billed a BFC regardless of meter size and a gallonage charge based on water demand with a 10,000 gallon cap. All general service customers should be billed based on meter size with

a gallonage charge based on water demand. The general service gallonage charge should be 20 percent higher than the residential gallonage charge to reflect that not all residential water demand is returned to the wastewater system. In addition, the tariff for private lift station owners, including the marinas, should be revised to reflect a BFC based on meter size that is 20 percent less than the applicable general service BFC consistent with prior Commission orders that have recognized a discount for customer-owned lift stations. The tariffs for bulk service for the marinas should be cancelled. Each of the pool facilities is served by a 5/8” x 3/4" water meter; therefore, staff recommends discontinuing the flat rates for pools and requiring the Utility to bill those facilities based on meter size for general service customers consistent with staff’s recommendation for the other general service customers. If a customer has multiple meters, the Utility should charge the approved BFC for each meter. The tariff for temporary service agreements for dewatering sludge loads should be cancelled.

In the February 10, 2016 response to staff, the Utility expressed serious concerns about a drastic change in the billing methodology, which could substantially increase rates for certain customers, result in repressed usage, and customers potentially reducing meter sizes. The Utility also believes that such large increases will also increase the number of delinquent and subsequently uncollectible accounts. Given the uncertainty with respect to customer response to the staff recommended rate structure, staff does not believe that a repression adjustment should be included at this time. However, based on staff’s analysis of the impact of the change in rate structure, it appears that many general service customers will benefit from the change in rate structure, particularly those customers that were billed based on both meter size and number of units behind the meter.

Staff’s recommended rate structure and rates are shown on Schedule No. 4. Staff also presents a percentage increase to existing rates as an alternative in Table 17-1 below. However, it should be noted that this alternative will not eliminate some of the inequities in the current rate structure..

Table 17-1
Staff's Recommended and Alternative Wastewater Rate Structures and Rates

	Current Rates	Staff Recommended Rates	Alternative I Across the Board (47.68%)
Residential Service			
All Meter Sizes	$17.81	$39.57	$26.30
Charge per 1,000 gallons - Residential	$3.87	$4.23	$5.72
10,000 gallon cap			
General Service			
Base Facility Charge by Meter Size			
5/8" x 3/4"	$17.81	$39.57	$26.30
1"	$44.53	$98.93	$65.75
1-1/2"	$89.05	$197.85	$131.50
2"	$142.47	$316.56	$210.40
3"	$284.95	$633.12	$420.80
4"	$445.24	$989.25	$657.50
6"	$890.49	$1,978.50	$1,315.00
8"	$1,602.86	$3,165.60	$2,104.00
8" Turbo	$2,048.10	$3,561.30	$2,367.00
Charge per 1,000 gallons - General Service	$4.64	$5.07	$6.85
General Service - Private Lift Station Owners			
5/8" x 3/4"	$17.81	$31.66	$21.04
1"	$44.53	$79.14	$42.08
1-1/2"	N/A	$158.28	$84.16
2"	$142.47	$253.25	$134.66
3"	N/A	$506.50	$269.31
4"	N/A	$791.40	$420.80
6"	N/A	$1,582.80	$841.60
8"	N/A	$2,532.48	$1,346.56
Charge per 1,000 gallons - General Service	$4.64	$5.07	$6.85
Bulk Wastewater Rate			
Safe Harbor Marina	$917.11	N/A	$1,354.39
South Stock Island Marinas	$244.43		$360.97
Swimming Pools			
Large	$105.75	N/A	$156.17
Small	$31.31	N/A	$46.24
Typical Residential 5/8" x 3/4" Meter Bill Comparison			
4,000 Gallons	$33.29	$56.49	$49.18
6,000 Gallons	$41.03	$64.95	$60.62
10,000 Gallons	$56.51	$81.87	$83.50

Conclusion

Based on the foregoing, the recommended rate structures and monthly wastewater rates are shown on Schedule No. 4. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates and discontinuance of reading customer meters. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice.

Issue 18: What is the appropriate rate for K W Resort's reuse service?

Recommendation: The appropriate rate for K W Resort's reuse service is $0.93 per 1,000 gallons. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice. (Thompson)

Staff Analysis: The Utility's primary method of disposal of the treated wastewater is through reuse. The Utility currently provides reuse service to two general service customers in Monroe County. The current reuse rate for these customers is $0.68 per 1,000 gallons. During the test year, in addition to the tariffed reuse rate, the Utility also charged for reuse testing consistent with its approved tariff.

Reuse rates are typically market based rather than cost based. This provides an incentive to encourage customers to use the reuse. In addition, there are cost savings associated with providing reuse to customers rather than purchasing land for disposal of the treated wastewater. Staff conducted a review of reuse rates charged throughout Monroe County listed in the Florida Department of Environmental Protection's 2014 Reuse Inventory Report and determined that there are only two entities, including K W Resort, that currently charge for reuse with K W Resort's rate being significantly lower than the other provider. There are also several wastewater utilities in Monroe County that provide reuse at no charge.

Staff examined the revenues received from reuse service and additional testing during the test year. Based on this information, staff believes that $0.93 per 1,000 gallons is a reasonable rate for K W Resort's reuse service, including the cost of testing. This would negate the need for an additional charge for testing.

Therefore, staff recommends that the appropriate rate for K W Resort's reuse service is $0.93 per 1,000 gallons. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice.

Issue 19: Should K W Resort's requested miscellaneous service charges be approved?

Recommendation: No. K W Resort's requested miscellaneous service charges should not be approved. However, staff recommends that the miscellaneous service charges shown in Table 19-4 are appropriate and should be approved if K W files a revised tariff. K W Resort should be required to file a proposed customer notice and tariff to reflect the Commission-approved charges. The approved charges should be effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code (F.A.C.). In addition, the approved charges should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice. (Thompson)

Staff Analysis: Section 367.091, F.S., authorizes the Commission to establish, increase, or change a rate or charge other than monthly rates or service availability charges. Rule 25-30.460, F.A.C., defines miscellaneous service charges as initial connection, normal reconnection, violation reconnection, and premises visit charges. The Utility requested an amendment to its existing miscellaneous service charges in the MFRs filed in this docket. Although the Utility requested a violation reconnection charge of $150 during business hours and $225 for after business hours, the Utility currently has an approved violation reconnection charge at actual cost, which is consistent with Commission practice. In response to a staff data request, K W Resort revised its requested miscellaneous service charges as reflected in Table 19-1 below.

Table 19-1
Proposed Miscellaneous Service Charges

Charge	Current	Proposed	
		Normal Hours	After Hours
Initial Connection	$15	$75	$125
Normal Reconnection	$15	$75	$125
Premises Visit	$10	$65	$125

Source: Utility tariff and Utility correspondence

The Utility's request was accompanied by its reason for requesting the amendment, as well as the cost justification required by Section 367.091, F.S., as reflected in Tables 19-2 and 19-3 below.

Table 19-2
Initial Connection and Normal Reconnection Cost Justification

Activity	Normal Hours Cost		Activity	After Hours Cost
Labor (Administrative) ($22.50/hr x1hr)	$22.50		Labor (Administrative) ($22.50/hr x1hr)	$22.50
Labor (Field) ($22.50/hr x.75hr)	16.88		Labor (Field) ($33.75/hr x2hr)	67.50
Labor (Supervision) ($68.00/hr x .25hr)	17.00		Labor (Supervision) ($68.00/hr x .25hr)	17.00
Benefits & Insurance (23%)	12.97		Benefits & Insurance (23%)	24.61
Transportation ($.56/mile x 3 miles)	1.68		Transportation ($.56/mile x 6 miles)	3.36
Supplies	0.80		Supplies	0.80
Postage	0.49		Postage	0.49
Total	$72.32		Total	$136.26

Source: Utility correspondence

Table 19-3
Premises Visit Cost Justification

Activity	Normal Hours Cost		Activity	After Hours Cost
Labor (Administrative) ($22.50/hr x.5hr)	$11.25		Labor (Administrative) ($22.50/hr x .5hr)	$11.25
Labor (Field) ($22.50/hr x1hr)	22.50		Labor ($33.75/hr x2hr)	67.50
Labor (Supervision) ($68.00/hr x .25hr)	17.00		Labor (Supervision) ($68.00/hr x .25hr)	17.00
Benefits & Insurance (23%)	11.67		Benefits & Insurance (23%)	22.02
Transportation ($.56/mile x 3 miles)	1.68		Transportation ($.56/mile x 6 miles)	3.36
Supplies	0.30		Supplies	0.80
Postage	0.49		Postage	0.49
Total	$64.89		Total	$122.42

Source: Utility correspondence

Because K W Resort is a wastewater only company, the only action needed for initial connections and normal reconnections can be handled administratively from the Utility's office. The Utility needs to work closely with FKAA to identify new connections and water service disconnections. Staff recommends that the Utility's existing initial connection and normal reconnection charges are sufficient and an after-hours charge is not necessary. However a customer may request that the Utility make a premises visit to respond to complaints or inquiries.

Staff recommends that the Utility be authorized to collect a $20 premises visit charge during normal business hours and $45 after hours to reflect the field and administrative labor and transportation costs to respond to customers.

Table 19-4
Recommended Miscellaneous Service Charges

Charge	Current	Staff Recommended	
		Normal Hours	After Hours
Initial Connection	$15	$15	N/A
Normal Reconnection	$15	$15	N/A
Premises Visit	$10	$20	$45

Source: Utility tariff and Utility correspondence

Commission practice has been to place the burden of such charges on the cost causer rather than the general body of ratepayers. This is consistent with one of the fundamental principles of rate making—ensuring that the cost of providing service is recovered from the cost causer.[19] Therefore, staff recommends that a premises visit charge of $20 during normal business hours and $45 are reasonable and should be approved, if the Utility files a revised tariff.

Based on the above, K W Resort's requested miscellaneous service charges should not be approved. However, staff recommends that the miscellaneous service charges shown in Table 19-4 are appropriate and should be approved if the Utility files a revised tariff. K W Resort should be required to file a proposed customer notice and tariff to reflect the Commission-approved charges. The approved charges should be effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code (F.A.C.). In addition, the approved charges should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice.

[19]Order Nos. PSC-03-1119-PAA-SU, issued October 7, 2003, in Docket No. 030106-SU, *In re: Application for staff-assisted rate case in Lee County by Environmental Protection Systems of Pine Island, Inc.*; and PSC-96-1409-FOF-WU, issued November 20, 1996, in Docket No. 960716-WU, *In re: Application for transfer of Certificate No. 123-W in Lake County from Theodore S. Jansen d/b/a Ravenswood Water System to Crystal River Utilities, Inc.*

Issue 20: Should K W Resort be authorized to collect Non-Sufficient Funds (NSF) charges?

Recommendation: Yes. K W Resort should be authorized to collect NSF charges for both systems. Staff recommends that K W Resort revise its tariffs to reflect the NSF charges currently set forth in Section 68.065, F.S. The NSF charges should be effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. Furthermore, the charges should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date the notice was given within 10 days of the date of the notice. (Thompson)

Staff Analysis: Section 367.091, F.S., requires rates, charges, and customer service policies to be approved by the Commission. The Commission has authority to establish, increase, or change a rate or charge. Staff believes that K W Resort should be authorized to collect NSF charges consistent with Section 68.065, F.S., which allows for the assessment of charges for the collection of worthless checks, drafts, or orders of payment. As currently set forth in Section 68.065(2), F.S., the following NSF charges may be assessed:

(1) $25, if the face value does not exceed $50,

(2) $30, if the face value exceeds $50 but does not exceed $300,

(3) $40, if the face value exceeds $300,

(4) or five percent of the face amount of the check, whichever is greater.

Approval of NSF charges is consistent with prior Commission decisions.[20] Furthermore, NSF charges place the cost on the cost-causer, rather than requiring that the costs associated with the return of the NSF checks be spread across the general body of ratepayers. As such, K W Resort should be authorized to collect NSF charges for both systems. Staff recommends that K W Resort revise its tariff sheet to reflect the NSF charges currently set forth in Section 68.065, F.S. The NSF charges should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. Furthermore, the NSF charges should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date the notice was given within 10 days of the date of the notice.

[20]Order Nos. PSC-14-0198-TRF-SU, issued May 2, 2014, in Docket No. 140030-SU, *In re: Request for approval to amend Miscellaneous Service charges to include all NSF charges by Environmental Protection Systems of Pine Island, Inc.;* and PSC-13-0646-PAA-WU, issued December 5, 2013, in Docket No. 130025-WU, *In re: Application for increase in water rates in Highlands County by Placid Lakes Utilities, Inc.*

Issue 21: Should K W Resort's request to implement a $9.50 late payment charge be approved?

Recommendation: No. K W Resort's request to implement a $9.50 late payment charge should not be approved. However, staff's recommended charge of $6.50 should be approved if the Utility files a revised tariff. The Utility should be required to file a proposed customer notice and tariff to reflect the Commission-approved charge. The approved charge should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice. (Thompson)

Staff Analysis: The Utility is requesting a $9.50 late payment charge to recover the cost of supplies and labor associated with processing late payment notices. The Utility's request for a late payment charge was accompanied by its reason for requesting the charge, as well as the cost justification required by Section 367.091, F.S. Staff believes this charge should be $6.50.

The Utility has a total of 3,200 customer accounts per month and, according to the Utility, there are a number of customers that do not pay by the due date each billing cycle. Based on historical data and the monthly billing cycle, the Utility anticipates it will prepare late payment notices for approximately 30 accounts per billing cycle. In the past, the Commission has allowed 10-15 minutes per account per month for clerical and administrative labor to research, review, and prepare the notice.[21] The Utility indicated it will spend approximately eight hours per billing cycle processing late payment notices, which results in an average of approximately 16 minutes per account (480 minutes / 30 accounts) and is within reason of past Commission decisions. The late payment notices will be processed by an employee, which results in labor cost of $9.00 (8 x $33.75 / 30) per account. Staff believes the labor cost should be performed by an administrative employee at the rate of $22.50 per hour. This would result in labor cost of $6.00 (8 x $22.50 / 30). Both the Utility's and staff's cost basis for the late payment charge, including the labor, is shown below.

[21]Order No. PSC-11-0204-TRF-SU, in Docket No. 100413-SU, issued April 25, 2011, *In re: Request for approval of tariff amendment to include a late fee of $14.00 in Polk County by West Lakeland Wastewater.*; Order No. PSC-08-0255-PAA-WS, in Docket No. 070391-WS, issued April 24, 2008, *In re: Application for certificates to provide water and wastewater service in Sumter County by Orange Blossom Utilities, Inc.*; Order No. PSC-01-2101-TRF-WS, in Docket No. 011122-WS, issued October 22, 2001, *In re: Tariff filing to establish a late payment charge in Highlands County by Damon Utilities, Inc.*

Table 21-1
Late Payment Charge Cost Justification

Activity	Utility Proposed		Activity	Staff Recommended
Labor	$9.00		Labor	$6.00
Printing	0.02		Printing	0.02
Postage	0.49		Postage	0.49
Total Cost	$9.51		Total Cost	$6.51

Source: Utility correspondence

Based on staff's research, since the late 1990s, the Commission has approved late payment charges ranging from $2.00 to $7.00.[22] The purpose of this charge is not only to provide an incentive for customers to make timely payment, thereby reducing the number of delinquent accounts, but also to place the cost burden of processing delinquent accounts solely upon those who are cost causers.

Based on the above, staff recommends that K W Resort's request to implement a $9.50 late payment charge should not be approved. However, staff's recommended charge of $6.50 should be approved if the Utility files a revised tariff. K W Resort should be required to file a proposed customer notice and revised tariff to reflect the Commission-approved charge. The approved charge should be effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice.

[22]Order Nos. PSC-01-2101-TRF-WS; Order No. PSC-08-0255-PAA-WS; Order No. PSC-09-0752-PAA-WU, in Docket No. 090185-WU, issued November 16, 2009, *In re: Application for grandfather certificate to operate water utility in St. Johns County by Camachee Island Company, Inc. d/b/a Camachee Cove Yacht Harbor Utility.*; and PSC-10-0257-TRF-WU, in Docket No. 090429-WU, issued April 26, 2010, *In re: Request for approval of imposition of miscellaneous service charges, delinquent payment charge and meter tampering charge in Lake County, by Pine Harbour Water Utilities, LLC.*; and. PSC-11-0204-TRF-SU*;* Order No. PSC-14-0105-TRF-WS, in Docket No. 130288-WS, issued February 20, 2014, *In re: Request for approval of late payment charge in Brevard County by Aquarina Utilities, Inc.*

Issue 22: Should K W be authorized to collect a Lift Station Cleaning charge?

Recommendation: Yes. K W Resort should be authorized to collect a monthly lift station cleaning charge for the Monroe County Detention Center (MCDC) of $1,462. K W Resort should be required to file a proposed customer notice to reflect the Commission-approved charge. The approved charge should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice. (Thompson)

Staff Analysis: In the Utility's last rate case the Commission acknowledged that the Utility collected $19,575 associated with the cleaning of the MCDC lift station. The Utility also collected $19,550 from the MCDC during the current test year through a monthly assessment. There is a great deal of time and effort involved with cleaning the MCDC lift station; therefore, staff recommends that a specific monthly charge be authorized, consistent with Commission practice, so that the cost burden is placed solely upon those who are the cost causer. At staff's request, the Utility provided cost justification as follows:

Table 22-1
Lift Station Cleaning Charge Cost Justification

Activity	Normal Hours Cost
Labor ($21/hr x 1.5hr)	$31.50
Disposal Cost ($13.55/lb x 100 lb)	$13.55
Supplies	$3.00
Total Per Day	$48.05
Annual Charge ($48.05 x 365)	$17,538.25
Monthly Charge ($17,538.25 / 12)	$1,461.52

Source: Utility correspondence

K W Resort should be authorized to collect a monthly lift station cleaning charge of $1,462 from the MCDC. K W Resort should be required to file a proposed customer notice to reflect the Commission-approved charge. The approved charge should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice.

Issue 23: Should the Utility's approved service availability policy and charges be revised?

Recommendation: Yes. K W Resort should be authorized to collect a water main extension charge or receive donated lines from future connections. However, the Utility should no longer be authorized to collect a plant capacity charge consistent with the guidelines set forth in Rule 25-30.580, F.A.C. K W Resort should be required to file a proposed customer notice to reflect the Commission-approved charge. The approved charge should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice. (Thompson)

Staff Analysis: Although K W Resort did not request a change in its service availability policy or charges, staff reviewed the Utility's approved policy and charges, as well its current contribution level and the impact of the pro forma plant on that contribution level. The Utility's service availability policy and charges, which were approved in Docket No. 980341-SU, provide that new connections pay for the cost of the collection system need to serve the customer as well as a plant capacity charge of $2,700 per ERC.

Based on staff's recommended rate base as of December 31, 2014, the Utility's contribution level, net CIAC / net plant ($6,634,936 / $5,648,278), was in excess of 100 percent. The Utility has total CIAC of $9,649,877 and total plant in service and land of $11,483,464; however, because the plant is significantly depreciated, the net CIAC balance exceeds the net plant balance. With the addition of the recommended pro forma plant items, the resulting contribution level is 74 percent, with no additional CIAC from future customers.

Pursuant to Rule 25-30.580, F.A.C., the Utility's contribution level should not exceed 75 percent at designed capacity. Further, the rule also provides that, at a minimum, customers should pay for the cost of the lines. While the Utility will have additional capacity as a result of the planned plant expansion, staff believes that, given the high contribution level, the Utility should no longer be authorized to collect a plant capacity charge. However, the Utility should be allowed to recover from future connections the cost of the lines needed to serve those customers.

Customers connecting after the effective date of the revised tariff should not be required to pay a plant capacity charge. Any customer that has prepaid the plant capacity charge but not connected to the wastewater system as of the effective date of the revised tariff should be refunded the prepaid plant capacity charge.

Therefore, staff recommends that K W Resort should be authorized to collect a water main extension charge or receive donated lines from future connections. However, the Utility should no longer be authorized to collect a plant capacity charge consistent with the guidelines set forth in Rule 25-30.580, F.A.C. K W Resort should be required to file a proposed customer notice to reflect the Commission-approved charge. The approved charge should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice.

Issue 24: What is the appropriate amount by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense as required by Section 367.0816, Florida Statutes?

Recommendation: The wastewater rates should be reduced as shown on Schedule No. 4, to remove rate case expense grossed up for regulatory assessment fees and amortized over a four-year period. The decrease in rates should become effective immediately following the expiration of the four-year rate case expense recovery period, pursuant to Section 367.0816, F.S. K W Resort should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. If the Utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense. (Thompson, Frank)

Staff Analysis: Section 367.0816, F.S., requires that the rates be reduced immediately following the expiration of the four-year amortization period by the amount of the rate case expense previously included in rates. The reduction will reflect the removal of $43,761 of revenue associated with the amortization of rate case expense, the associated return on deferred rate case expense included in working capital, and the gross up for RAFs. Using K W Resort's current revenues, expenses, capital structure and customer base, the reduction in revenues will result in the rate decreases as shown on Schedule No. 4.

The Utility should be required to file revised tariff sheets no later than one month prior to the actual date of the required rate reduction. K W Resort should also be required to file a proposed customer notice setting forth the lower rates and the reason for the reduction. If the Utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease, and the reduction in the rates due to the amortized rate case expense.

Issue 25: Should the Utility be required to notify, within 90 days of an effective order finalizing this docket, that it has adjusted its books for all the applicable National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) associated with the Commission approved adjustments?

Recommendation: Yes. The Utility should be required to notify the Commission, in writing, that it has adjusted its books in accordance with the Commission's decision. K W Resort should submit a letter within 90 days of the final order in this docket, confirming that the adjustments to all the applicable NARUC USOA accounts have been made to the Utility's books and records. In the event the Utility needs additional time to complete the adjustments, notice should be provided within seven days prior to deadline. Upon providing good cause, staff should be given administrative authority to grant an extension of up to 60 days. (Norris)

Staff Analysis: The Utility should be required to notify the Commission, in writing that it has adjusted its books in accordance with the Commission's decision. K W Resort should submit a letter within 90 days of the final order in this docket, confirming that the adjustments to all the applicable NARUC USOA accounts have been made to the Utility's books and records. In the event the Utility needs additional time to complete the adjustments, notice should be provided within seven days prior to deadline. Upon providing good cause, staff should be given administrative authority to grant an extension of up to 60 days.

Issue 26: Should this docket be closed?

Recommendation: No. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. The docket should remain open for staff's verification that the outstanding Phase I pro forma items have been completed, the revised tariff sheets and customer notice have been filed by the Utility and approved by staff, and the Utility has provided staff with proof that the adjustments for all the applicable NARUC USOA primary accounts have been made. Also, the docket should remain open to allow staff to verify that the Phase II pro forma items have been completed, and the Phase II rates properly implemented. Once these actions are complete, this docket should be closed administratively. (Barrera, Norris)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. The docket should remain open for staff's verification that the outstanding Phase I pro forma items have been completed, the revised tariff sheets and customer notice have been filed by the Utility and approved by staff, and the Utility has provided staff with proof that the adjustments for all the applicable NARUC USOA primary accounts have been made. Also, the docket should remain open to allow staff to verify that the Phase II pro forma items have been completed, and the Phase II rates properly implemented. Once these actions are complete, this docket should be closed administratively.

K W Resort Utilities Corp. **Schedule No. 1-A**
Schedule of Wastewater Rate Base **Docket No. 150071-SU**
Test Year Ended 12/31/14 **Phase I**

	Description	Test Year Per Utility	Utility Adjust-ments	Adjusted Test Year Per Utility	Staff Adjust-ments	Staff Adjusted Test Year
1	Plant in Service	$11,925,704	$3,574,468	$15,500,172	($4,391,708)	$11,108,464
2	Land and Land Rights	375,923	0	375,923	(923)	375,000
3	Non-used and Useful Components	0	0	0	0	0
4	Accumulated Depreciation	(5,828,761)	(200,666)	(6,029,427)	194,241	(5,835,186)
5	CIAC	(9,946,997)	0	(9,946,997)	297,120	(9,649,877)
6	Amortization of CIAC	3,096,094	0	3,096,094	(81,153)	3,014,941
7	Construction Work in Progress	0	0	0	303,099	303,099
8	Working Capital Allowance	0	1,367,232	1,367,232	(645,964)	721,268
9	**Rate Base**	($378,037)	$4,741,034	$4,362,997	($4,325,287)	$37,710

K W Resort Utilities Corp. Adjustments to Rate Base Test Year Ended 12/31/14		Schedule No. 1-B Docket No. 150071-SU Phase I
	Explanation	**Wastewater**
	Plant In Service	
1	Reflect agreed upon audit adjustments. (Issue 2)	($817,240)
2	Remove pro forma plant. (Issue 3)	(3,574,468)
	Total	($4,391,708)
	Land	
	Reflect agreed upon audit adjustments. (Issue 2)	($923)
	Accumulated Depreciation	
1	Reflect agreed upon audit adjustments. (Issue 2)	($2,040)
2	Remove pro forma plant accumulated depreciation. (Issue 3)	196,281
	Total	$194,241
	CIAC	
	Reflect agreed upon audit adjustments. (Issue 2)	$297,120
	Accumulated Amortization of CIAC	
	Reflect agreed upon audit adjustments. (Issue 2)	($81,153)
	CWIP	
	Reflect agreed upon audit adjustments. (Issue 2)	$303,099
	Working Capital	
1	Reflect agreed upon audit adjustments. (Issue 2)	$51,600
2	Reflect appropriate cash balance to include in working capital. (Issue 5)	(615,687)
3	Reflect appropriate deferred rate case expense. (Issue 5).	13,611
4	Reflect a year of amortization for legal fees. (Issue 5)	(95,487)
	Total	($645,964)

K W Resort Utilities Corp. **Schedule No. 2**
Capital Structure-13-Month Average **Docket No. 150071-SU**
Test Year Ended 12/31/14 **Phase I**

	Description	Total Capital	Specific Adjust-ments	Subtotal Adjusted Capital	Prorata Adjust-ments	Capital Reconciled to Rate Base	Ratio	Cost Rate	Weighted Cost
Per Utility									
1	Long-term Debt	$1,248,337	$0	$1,248,337	($75,868)	$1,172,469	26.87%	5.37%	1.44%
2	Short-term Debt	0	0	0	0	0	0.00%	0.00%	0.00%
3	Preferred Stock	0	0	0	0	0	0.00%	0.00%	0.00%
4	Common Equity	(276,537)	3,500,000	3,223,463	(195,907)	3,027,556	69.39%	9.36%	6.50%
5	Customer Deposits	162,972	0	162,972	0	162,972	3.74%	2.00%	0.07%
6	Deferred Income Taxes	0	0	0	0	0	0.00%	0.00%	0.00%
7	**Total Capital**	$1,134,772	$3,500,000	$4,634,772	($271,775)	$4,362,997	100.00%		8.01%
Per Staff									
8	Long-term Debt	$1,248,337	$0	$1,248,337	($1,214,982)	$33,355	88.45%	5.37%	4.75%
9	Short-term Debt	0	0	0	0	0	0.00%	0.00%	0.00%
10	Preferred Stock	0	0	0	0	0	0.00%	0.00%	0.00%
11	Common Equity	(276,537)	276,537	0	0	0	0.00%	11.16%	0.00%
12	Customer Deposits	162,972	0	162,972	(158,617)	4,355	11.55%	2.00%	0.23%
13	Deferred Income Taxes	0	0	0	0	0	0.00%	0.00%	0.00%
14	**Total Capital**	$1,134,772	$276,537	$1,411,309	($1,373,599)	$37,710	100.00%		4.98%

	LOW	HIGH
RETURN ON EQUITY	10.16%	12.16%
OVERALL RATE OF RETURN	4.98%	4.98%

K W Resort Utilities Corp. **Schedule No. 3-A**
Statement of Wastewater Operations **Docket No. 150071-SU**
Test Year Ended 12/31/14 **Phase I**

	Description	Test Year Per Utility	Utility Adjust-ments	Adjusted Test Year Per Utility	Staff Adjust-ments	Staff Adjusted Test Year	Revenue Increase	Revenue Requirement
1	**Operating Revenues:**	$1,479,307	$1,452,452	$2,931,759	($1,376,898)	$1,554,861	$683,185 43.94%	$2,238,046
	Operating Expenses							
2	Operation & Maintenance	$1,199,672	$840,042	$2,039,714	($93,310)	$1,946,404	$0	$1,946,404
3	Depreciation	95,996	200,666	296,662	(187,767)	108,895	0	108,895
4	Amortization	0	0	0	0	0	0	0
5	Taxes Other Than Income	132,607	113,300	245,907	(95,781)	150,126	30,743	180,869
6	Income Taxes	0	0	0	0	0	0	0
7	**Total Operating Expense**	1,428,275	1,154,008	2,582,283	(376,859)	2,205,424	30,743	2,236,168
8	**Operating Income**	$51,032	$298,444	$349,476	($1,000,039)	($650,563)	$652,442	$1,878
9	**Rate Base**	($378,037)		$4,362,997		$37,710		$37,710
10	**Rate of Return**	(13.50%)		8.01%		(1,725.19%)		4.98%

K W Resort Utilities Corp. Adjustment to Operating Income Test Year Ended 12/31/14		Schedule No. 3-B Docket No. 150071-SU Phase I
	Explanation	**Wastewater**
	Operating Revenues	
1	Remove requested final revenue increase.	($1,438,382)
2	To reflect the appropriate amount of test year revenues. (Issue 9)	61,484
	Total	($1,376,898)
	Operation and Maintenance Expense	
1	Reflect agreed upon audit adjustments. (Issue 2)	($17,085)
2	Reflect appropriate pro forma expense. (Issue 11)	(10,028)
3	Remove management fees. (Issue 12)	(60,000)
4	Reflect further adjustments to O&M expense (Issue 13)	(13,003)
5	Reflect appropriate rate case expense amortization. (Issue 14)	6,805
	Total	($93,310)
	Depreciation Expense - Net	
1	Reflect agreed upon audit adjustments. (Issue 2)	$8,514
2	Remove pro forma depreciation expense. (Issue 3)	(196,281)
	Total	($187,767)
	Taxes Other Than Income	
1	To remove RAFs on adjustments above.	($63,169)
2	Remove pro forma property taxes. (Issue 3)	(35,696)
3	Reflect appropriate pro forma payroll taxes. (Issue 11)	1,875
	Total	($95,781)

K W Resort Utilities Corp.				Schedule No. 4
Test Year Ended December 31, 2014				Docket No. 150071-SU
Monthly Wastewater Rates				Phase I
	Utility Current Rates	Utility Requested Rates	Staff Recommended Phase I Rates	4 Year Rate Reduction
Residential Service				
All Meter Sizes	$17.81	$35.09	$39.57	$0.80
Charge per 1,000 gallons - Residential	$3.87	$7.62	$4.23	$0.09
10,000 gallon cap				
General Service				
Base Facility Charge by Meter Size				
5/8" x 3/4"	$17.81	$35.09	$39.57	$0.80
1"	$44.53	$87.72	$98.93	$2.00
1-1/2"	$89.05	$175.43	$197.85	$4.00
2"	$142.47	$280.67	$316.56	$6.40
3"	$284.95	$561.35	$633.12	$12.79
4"	$445.24	$877.12	$989.25	$19.99
6"	$890.49	$1,754.27	$1,978.50	$39.98
8"	$1,602.86	$3,157.63	$3,165.60	$63.97
8" Turbo	$2,048.10	$4,034.76	$3,561.30	$71.97
Charge per 1,000 gallons - General Service	$4.64	$9.14	$5.07	$0.10
Reuse Service				
Per 1,000 gallons	$0.68	$1.34	$0.93	$0.02
Private Lift Station Owners				
5/8" x 3/4"	$17.81	$35.09	$31.66	$0.64
1"	$44.53	$87.72	$79.14	$1.60
1-1/2"	N/A	N/A	$158.28	$3.20
2"	$142.47	$280.67	$253.25	$5.12
3"	N/A	N/A	$506.50	$10.24
4"	N/A	N/A	$791.40	$15.99
6"	N/A	N/A	$1,582.80	$31.99
8"	N/A	N/A	$2,532.48	$51.18
Charge per 1,000 gallons - General Service	$4.64	$9.14	$5.07	$0.10
Bulk Wastewater Rate				
Safe Harbor Marina	$917.11	$3,280.11	N/A	N/A
South Stock Island Marinas	$244.43	$481.53	N/A	N/A
Charge per 1,000 gallons - Bulk Wastewater	$4.64	$9.14	N/A	N/A
Swimming Pools				
Large	$105.75	$207.54	N/A	N/A
Small	$31.31	$61.68	N/A	N/A
Typical Residential 5/8" x 3/4" Meter Bill Comparison				
4,000 Gallons	$33.29	$65.57	$56.49	
6,000 Gallons	$41.03	$80.81	$64.95	
10,000 Gallons	$56.51	$111.29	$81.87	

K W Resort Utilities Corp. Schedule of Wastewater Rate Base Test Year Ended 12/31/14				Schedule No. 5-A Docket No. 150071-SU Phase II
	Description	**Phase I Amounts**	**Staff Adjust-ments**	**Phase II Adjusted Test Year**
1	Plant in Service	$11,108,464	$3,481,973	$14,590,437
2	Land and Land Rights	375,000	0	375,000
3	Non-used and Useful Components	0	(1,244,082)	(1,244,082)
4	Accumulated Depreciation	(5,835,186)	(191,289)	(6,026,475)
5	CIAC	(9,649,877)	0	(9,649,877)
6	Amortization of CIAC	3,014,941	0	3,014,941
7	Construction Work in Progress	303,099	(303,099)	0
8	Working Capital Allowance	721,268	(95,487)	625,781
9	**Rate Base**	$37,710	$1,648,015	$1,685,725

K W Resort Utilities Corp. Adjustments to Rate Base Test Year Ended 12/31/14	Schedule No. 5-B Docket No. 150071-SU Phase II
Explanation	**Wastewater**
Plant In Service Reflect appropriate pro forma plant. (Issue 16)	$3,481,973
Non-used and Useful Reflect non-used and useful component. (Issue 16)	($1,244,082)
Accumulated Depreciation To reflect pro forma accumulated depreciation. (Issue 16)	($191,289)
CWIP Reflect plant project placed in service. (Issue 16)	($303,099)
Working Capital To reflect an additional year of amortization of legal fees. (Issue 16)	($95,487)

K W Resort Utilities Corp. **Schedule No. 6**
Capital Structure-13 Month Average **Docket No. 150071-SU**
Test Year Ended 12/31/14 **Phase II**

	Description	Total Capital	Specific Adjust-ments	Subtotal Adjusted Capital	Prorata Adjust-ments	Capital Reconciled to Rate Base	Ratio	Cost Rate	Weighted Cost
Per Utility									
1	Long-term Debt	$1,248,337	$0	$1,248,337	($75,868)	$1,172,469	26.87%	5.37%	1.44%
2	Short-term Debt	0	0	0	0	0	0.00%	0.00%	0.00%
3	Preferred Stock	0	0	0	0	0	0.00%	0.00%	0.00%
4	Common Equity	(276,537)	3,500,000	3,223,463	(195,907)	3,027,556	69.39%	9.36%	6.50%
5	Customer Deposits	162,972	0	162,972	0	162,972	3.74%	2.00%	0.07%
6	Deferred Income Taxes	0	0	0	0	0	0.00%	0.00%	0.00%
7	**Total Capital**	$1,134,772	$3,500,000	$4,634,772	($271,775)	$4,362,997	100.00%		8.01%
Per Staff									
8	Long-term Debt	$1,248,337	$0	$1,248,337	($823,249)	$425,088	25.22%	5.37%	1.35%
9	Short-term Debt	0	0	0	0	0	0.00%	0.00%	0.00%
10	Preferred Stock	0	0	0	0	0	0.00%	0.00%	0.00%
11	Common Equity	(276,537)	3,500,000	3,223,463	(2,125,798)	1,097,665	65.12%	9.36%	6.10%
12	Customer Deposits	162,972	0	162,972	0	162,972	9.67%	2.00%	0.19%
13	Deferred Income Taxes	0	0	0	0	0	0.00%	0.00%	0.00%
14	**Total Capital**	$1,134,772	$3,500,000	$4,634,772	($2,949,047)	$1,685,725	100.00%		7.64%

	LOW	HIGH
RETURN ON EQUITY	8.36%	10.36%
OVERALL RATE OF RETURN	6.99%	8.30%

K W Resort Utilities Corp. | **Schedule No. 7-A**
Statement of Wastewater Operations | **Docket No. 150071-SU**
Test Year Ended 12/31/14 | **Phase II**

	Description	Phase I Amounts	Staff Adjust-ments	Staff Adjusted Test Year	Revenue Increase	Phase II Revenue Requirement
1	**Operating Revenues:**	$2,238,046	$0	$2,238,032	$247,858 11.07%	$2,485,904
	Operating Expenses					
2	Operation & Maintenance	$1,946,404	$0	$1,946,404	$0	$1,946,404
3	Depreciation	108,895	85,179	194,074	0	194,074
4	Amortization	0	0	0	0	0
5	Taxes Other Than Income	180,869	24,537	205,406	11,154	216,560
6	Income Taxes	0	0	0	0	0
7	**Total Operating Expense**	2,236,168	109,717	2,345,884	11,154	2,357,038
8	**Operating Income**	$1,878		($107,838)		$128,866
9	**Rate Base**	$37,710		$1,685,725		$1,685,725
10	**Rate of Return**	4.98%		(6.40%)		7.64%

K W Resort Utilities Corp. Adjustment to Operating Income Test Year Ended 12/31/14	Schedule No.7-B Docket No. 150071-SU Phase II
Explanation	**Wastewater**
Depreciation Expense - Net	
1 Remove net depreciation on non-U&U adjustment. (Issue 16)	($106,110)
2 Reflect depreciation expense on pro forma plant adjustment. (Issue 16)	$191,289
Total	$85,179
Taxes Other Than Income	
1 Reflect appropriate property taxes related to U&U adjustment. (Issue 16)	($7,338)
2 Reflect appropriate property taxes related to pro forma adjustments. (Issue 16)	$31,875
Total	$24,537

K W Resort Utilities Corp. Test Year Ended December 31, 2014 Monthly Wastewater Rates	Schedule No. 8 Docket No. 150071-SU Phase II

	Staff Recommended Phase I Rates	Staff Recommended Phase II Rates
Residential Service		
All Meter Sizes	$39.57	$44.20
Charge per 1,000 gallons - Residential	$4.23	$4.73
10,000 gallon cap		
General Service		
Base Facility Charge by Meter Size		
5/8" x 3/4"	$39.57	$44.20
1"	$98.93	$110.50
1-1/2"	$197.85	$221.00
2"	$316.56	$353.60
3"	$633.12	$707.20
4"	$989.25	$1,105.00
6"	$1,978.50	$2,210.00
8"	$3,165.60	$3,536.00
8" Turbo	$3,561.30	$3,978.00
Charge per 1,000 gallons - General Service	$5.07	$5.66
Reuse Service		
Per 1,000 gallons	$0.93	$0.93
Private Lift Station Owners		
5/8" x 3/4"	$31.66	$35.36
1"	$79.14	$88.40
1-1/2"	$158.28	$141.44
2"	$253.25	$226.30
3"	$506.50	$452.61
4"	$791.40	$707.20
6"	$1,582.80	$1,414.40
8"	$2,532.48	$2,263.04
Charge per 1,000 gallons - General Service	$5.07	$5.66
Bulk Wastewater Rate		
Safe Harbor Marina	N/A	N/A
South Stock Island Marinas	N/A	N/A
Charge per 1,000 gallons - Bulk Wastewater	N/A	N/A
Swimming Pools		
Large	N/A	N/A
Small	N/A	N/A
Typical Residential 5/8" x 3/4" Meter Bill Comparison		
4,000 Gallons	$56.49	$63.12
6,000 Gallons	$64.95	$72.58
10,000 Gallons	$81.87	$91.50

Item 6

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 18, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (POE Ellis, Wooten)
Office of the General Counsel (Murphy)

RE: Docket No. 150256-EQ – Petition for approval to terminate the North Broward Resource Recovery Facility electric power purchase agreement with Wheelabrator North Broward, Inc., by Florida Power & Light Company.

AGENDA: 03/01/16 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On December 3, 2015, Florida Power & Light Company (FPL) filed a petition to terminate its purchased power agreement, known as the North Broward Resource Recovery Facility Electric Power Purchase Agreement (PPA), with Wheelabrator North Broward, Inc. (WNB). The North Broward Resource Recovery Facility (Facility) is a 68 MW municipal solid waste generating facility. The PPA is for 11 MW of firm capacity and energy and currently expires on December 31, 2026.

The Commission previously approved the PPA in Order No. PSC-92-0050-FOF-EQ, issued March 11, 1992.[1] On September 9, 2015, FPL was advised by WNB that the Facility would be shut down due to the economics and the lack of a dedicated waste stream. On November 3, 2015, FPL and WNB entered into an agreement terminating the PPA as of that date.

The Commission has jurisdiction over this matter pursuant to Sections 366.051, 366.91 and 366.92 Florida Statutes (F.S.).

[1]Order No. PSC-92-0050-FOF-EQ, issued March 11, 1992, in Docket No. 911140-EQ, *In re: Petition for closure of standard offer contract subscription limit, and for approval of cost recovery of payments to be made through two negotiated power purchase agreements with Wheelabrator North Broward, Inc. and Wheelabrator South Broward, Inc. by Florida Power & Light Company.*

Discussion of Issues

Issue 1: Should the Commission approve Florida Power & Light Company's request to terminate the North Broward Resource Recovery Facility Electric Power Purchase Agreement?

Recommendation: Yes. The mutually agreed upon termination does not require FPL to construct or purchase replacement capacity to meet seasonal peak demand. Early capacity payments made under the PPA have been repaid over the term of the contract, reaching a zero value in 2003. Therefore, termination of the contract will have no impact to the rates of the general body of ratepayers. (Wooten)

Staff Analysis: The PPA is for 11 MW of firm capacity and energy and currently expires on December 31, 2026. However, the Facility has not delivered energy or capacity to FPL's system since August 2015. Pursuant to the PPA capacity payments continue until the Annual Billing Capacity Factor, a term defined within the PPA, drops below 60 percent. At the time of FPL's petition this was projected to occur in December 2015.

On September 9, 2015, FPL was advised by WNB that the Facility would be shut down due to the economics and the lack of a dedicated waste stream. On November 3, 2015, FPL and WNB entered into an agreement to terminate the PPA as of that date (See Attachment A). Pursuant to the terms of the agreement, FPL and WNB have mutually agreed to terminate the PPA and state that there are no further obligations or liabilities to either company.

Pursuant to Rule 25-17.0836, Florida Administrative Code (F.A.C.), Staff reviewed the agreement to terminate for the impact on the general body of ratepayers, including benefits to ratepayers and avoided cost. A termination of the PPA would result in a net loss of 11 MW of firm capacity on FPL's system. FPL would retain sufficient generating capacity without the PPA to meet its reserve margin requirements through the current ten-year planning horizon (2015 through 2024). As a result, FPL is not required to construct or purchase replacement capacity to meet seasonal peak demand.

As noted previously, the Facility has not produced energy or capacity since August 2015, and no energy or capacity payments from the PPA would be due for recovery through the Fuel and Purchased Power Cost Recovery Clause. Early capacity payments made under the PPA have been repaid over the term of the contract, reaching a zero value in 2003. Therefore, termination of the contract will have a minimal impact to the general body of ratepayers and there are no projected costs to avoid for replacement capacity.

Conclusion

Staff recommends that the Commission approve FPL's request to terminate the PPA. The mutually agreed upon termination does not require FPL to construct or purchase replacement capacity to meet seasonal peak demand. Early capacity payments made under the PPA have been repaid over the term of the contract, reaching a zero value in 2003. Therefore, termination of the contract will have no impact to the rates of the general body of ratepayers.

Issue 2: Should this docket be closed?

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

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

ATTACHMENT A

AGREEMENT TO TERMINATE
NORTH BROWARD RESOURCE RECOVERY FACILITY
ELECTRIC POWER PURCHASE AGREEMENT

WHEREAS, Broward Waste Energy Company, L.P., the predecessor to Wheelabrator North Broward Inc., and Florida Power & Light Company entered into a "Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility dated March 13, 1987 (the "Contract") and

WHEREAS, Wheelabrator North Broward Inc. and FPL entered into that certain "Electric Power Purchase Agreement" dated November 19, 1991 (the "Agreement"), and

WHEREAS, both the Contract and Agreement provided for the purchase and sale of electricity to be generated by a Qualifying Facility consistent with Florida Public Service Commission rules and regulations; and

WHEREAS, Wheelabrator and FPL desire to terminate the Contract.

NOW THEREFORE, for good and valuable consideration the receipt of which is acknowledged, Wheelabrator and FPL agree as follows:

1. The Agreement shall terminate as of November 3, 2015 ("Agreement Termination Date"). As of the Agreement Termination Date, Wheelabrator and FPL agree that all charges, liabilities, obligations, terms and conditions of the Agreement have been fully performed and satisfied by each party thereto. From and after the Agreement Termination Date, neither FPL nor Wheelabrator shall have any obligation to one another, including without limitation the obligation to generate, sell, or purchase energy or capacity.

2. Wheelabrator and FPL agree that as of the Agreement Termination Date the Capacity Account balance is zero, such that Wheelabrator has no obligation to repay any credit balance in the Capacity Account and Wheelabrator's obligation to pay the credit balance in the Capacity Account, if any, shall not survive this termination of the Agreement.

3. Capitalized terms used herein but not defined shall have the meaning in the Contract.

Agreed to this 3rd of November 2015.

FLORIDA POWER & LIGHT COMPANY	WHEELABRATOR NORTH BROWARD INC.
Name: Sam Forrest	Name: Tim Hawkins
Title: Vice President	Title: President
Date:	Date: 11-3-15

Legal Review Completed

Item 7

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 18, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (Lewis)
Division of Accounting and Finance (Golden, Vogel)
Division of Economics (Bruce)
Office of the General Counsel (Corbari)

RE: Docket No. 140219-WU – Application for staff-assisted rate case in Polk County by Alturas Utilities, L.L.C.

AGENDA: 03/01/16 – Proposed Agency Action – Except for Issue Nos. 10, 11, 13, and 14 - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: 05/06/2016 (15-Month Effective Date (SARC))

SPECIAL INSTRUCTIONS: Place item on Agenda immediately before Docket No. 140220-WU, *In re: Application for staff-assisted rate case in Polk County by Sunrise Utilities, L.L.C.*

Table of Contents

Case Background

Alturas Utilities, L.L.C., (Alturas or Utility) is a Class C utility providing water service to approximately 51 residential customers and 10 general service customers in Alturas, Florida in Polk County. The Utility's service territory is located in the Southwest Florida Water Management District (SWFWMD) and is subject to a year-round irrigation rule. Alturas has been in existence since 1928 and was granted a Grandfather certificate by the Commission in 1997 in the name of Alturas Waterworks.[1] The Utility's water treatment plant (WTP) was placed into service in 1952 and was fully depreciated in December 1992.[2]

In 1998, Alturas Waterworks was transferred to Keen Sales, Rentals and Utilities, Inc. (Keen).[3] Alturas Utilities acquired a portion of Keen's service territory in 2005 when the Commission granted the transfer.[4] According to the Utility's 2014 Annual Report, its total gross revenues were $27,710 and total operating expenses were $42,012, resulting in a net loss of $14,302.

On November 10, 2014, Alturas filed its application for a staff-assisted rate case (SARC), in accordance with a payment plan negotiated with staff for the payment of delinquent Regulatory Assessment Fees (RAFs) owed by the Utility. Staff selected the test year ending December 31, 2014, for the instant case. Alturas' last rate case proceeding before the Commission was in 2009 in Docket No. 090477-WU.[5]

On May 19, 2015, a customer meeting was held in Bartow, Florida to receive customer questions and comments concerning Alturas' rate case and quality of service. On June 11, 2015, the Office of Public Counsel (OPC) filed comments identifying its concerns with information contained in the Staff Report.[6] On December 9, 2015, staff held a noticed, informal meeting with OPC to discuss the status of the Utility's SARC, including issues or concerns identified by staff, OPC or other interested party.[7] The Commission has jurisdiction in this case pursuant to Section 367.0814, Florida Statutes, (F.S.).

[1]Order No. PSC-97-0513-FOF-WU, issued on May 5, 1997, in Docket No. 961109-WU, *In re: Application for Grandfather Certificate to Operate a Water Utility in Polk County by Alturas Water Works.*
[2]Order No. PSC-01-0323-PAA-WU, issued on February 5, 2001, in Docket No. 000580-WU, *In re: Application for staff assisted rate case in Polk County by Keen Sales, Rentals and Utilities, Inc. (Alturas Water Works).*
[3]Order No. PSC-98-1752-FOF-WU, issued on December 22, 1998, in Docket No. 980536-WU, *In re: Application for transfer of water facilities from Alturas Water Works to Keen Sales, Rentals and Utilities, Inc. In Polk County, cancellation of Alturas' Certificate No. 591-W and amendment of Keen's Certificate No. 582-W to include additional territory.*
[4]Order No. PSC-05-0309-PAA-WU, issued on March 21, 2005, in Docket No. 040160-WU, *In re: Application for transfer of portion of Certificate No. 582-W by Keen Sales, Rentals and Utilities, Inc. to Alturas Utilities, L.L.C., in Polk County.*
[5]Order No. PSC-10-0380-PAA-WU, issued on June 15, 2010, in Docket No. 090477-WU, *In re: Application for staff-assisted rate case in Polk County by Alturas Utilities, L.L.C.*
[6]Document Nos. 03571-15, filed on June 10, 2015, and 03595-15 filed on June 11, 2015, in Docket No. 140219-WU.
[7]Document No. 07808-15, filed on December 10, 2015, in Docket Nos. 140219-WU and 140220-WU.

Discussion of Issues

Issue 1: Should the quality of service provided by Alturas be considered satisfactory?

Recommendation: No. The overall quality of service provided by Alturas should be considered unsatisfactory because the Utility has failed to address maintenance and repairs recommended by the Polk County Health Department (PCHD) in 2011. As such, staff recommends decreasing the officers' salaries by 25 percent as detailed in Issue 7. (Lewis)

Staff Analysis: Pursuant to Rule 25-30.433(1), F.A.C., in water and wastewater rate cases, the Commission shall determine the overall quality of service provided by the utility. Overall quality of service is derived from an evaluation of three separate components of the Utility's operations. These components are: (1) the quality of the utility's product; (2) the operating conditions of the utility's plant and facilities; and (3) the utility's attempt to address customer satisfaction. The Rule further states that sanitary surveys, outstanding citations, violations, and consent orders on file with the Department of Environmental Protection (DEP) and the county health department over the preceding three-year period shall be considered. Additionally, Section 367.0812(1)(c), F.S., requires the Commission to consider the extent to which the utility provides water service that meets secondary water quality standards as established by the DEP.

Quality of Utility's Product

Staff's evaluation of Alturas' product quality consisted of a review of the Utility's compliance with the DEP primary and secondary drinking water standards, county health department standards, and customer complaints. Primary standards protect public health while secondary standards regulate contaminants that may impact the taste, odor, and color of drinking water.

Based on staff's review of the DEP and the PCHD records, Alturas was in compliance with all primary and secondary standards during the three-year period (2012-2014) that preceded its application for a staff-assisted rate case. However, on June 9, 2015, the PCHD conducted a sanitary survey and found that the Utility's chlorination levels were insufficient. Follow up inspections by the PCHD on July 9, 2015, and July 17, 2015, indicated that the chlorination issue had not been resolved. On July 21, 2015, the PCHD issued a warning notice to both Alturas and its sister company, Sunrise Utilities L.L.C., for not properly maintaining chlorine residuals. Alturas' triennial testing, of both primary and secondary standards, completed on December 15, 2015, indicated that the Utility was in compliance with the DEP and the PCHD standards. Therefore, it appears that Alturas has corrected the chlorination issues and is now in compliance with the DEP and the PCHD primary and secondary standards.

Staff's review of complaints filed by customers did not reveal any issues or concerns regarding the quality of Alturas' product. Based on staff's review, giving consideration to the Utility's current compliance with the DEP and the PCHD standards, as well as the lack of customer complaints, the quality of Alturas' product should be considered satisfactory.

Operating Condition of the Utility's Plant and Facilities

Alturas' water system provides finished water obtained from a single well, which draws ground water from the aquifer. The raw water is injected with liquid chlorine prior to entering a 3,000-gallon hydropneumatic tank, and then pumped into the water distribution system. The distribution system is a composite network mix of PVC, concrete and galvanized pipe. Staff's evaluation of Alturas' facilities included a review of the Utility's compliance with the DEP and the PCHD standards of operation.[8] In December 2011, the PCHD conducted a plant inspection and recommended that the following repairs be performed:

1. The interior of the hydropneumatic tank should be cleaned and recoated *by December 2013*.
2. Pressure relief valves should be set at 92 psi.
3. Hydropneumatic tank cradles should be replaced or repaired *by September 2014*.

On August 28, 2013, and April 22, 2014, the PCHD issued letters to Alturas requesting that the Utility provide scheduled maintenance on its hydropneumatic tank. On May 26, 2015, the PCHD issued a warning notice to Alturas for failure to respond to its previous requests concerning the status of the repairs that were recommended in December 2011. The warning notice also notified Alturas that it needed to provide scheduled maintenance on the hydropneumatic tank prior to the PCHD's next inspection scheduled for December 2016.[9]

On February 4, 2016, staff received a proposal obtained by Alturas for services to repair the tank cradles by February 19, 2016. Although Alturas has provided documentation that it is planning to perform some of the PCHD's recommended repairs, the Utility has not been responsive to the PCHD. As of the date of staff's recommendation, two of the PCHD recommended repairs have not been completed. Based on the Utility's non-compliance and non-responsiveness to the PCHD notices and standards, staff believes that the operating condition of the Utility's plant and facilities should be considered unsatisfactory. OPC also raised concerns about the Utility's non-responsiveness to the PCHD.[10,11]

The Utility's Attempt to Address Customer Satisfaction

The final component of the overall quality of service which must be assessed is customer satisfaction. As part of staff's evaluation of customer satisfaction staff held a customer meeting (May 19, 2015) to receive customer comments concerning Alturas' quality of service. No customers attended the meeting. Staff also requested, from the DEP and the PCHD, any complaint records filed against the Utility from 2011 through 2015. The DEP and the PCHD responded that it had not received any complaints against the Utility during the specified time frame. The same request was sent to Alturas, which responded that it did not have any customer complaints outside of the ones forwarded by the Commission's Office of Consumer Assistance and Outreach for the requested period. The review of the Commission's complaint records indicated six complaints were received from January 1, 2011, through December 31, 2014, all of which occurred in 2011.

[8]Staff conducted a plant site visit on May 19, 2015.
[9]Document No. 03102-15, filed on May 26, 2015, in Docket No. 140219-WU.
[10]Document 03595-15, filed on June 11, 2015, in Docket No. 140219-WU.
[11]Document 03572-15, filed on June 10, 2015, in Docket No. 140220-WU, *In re: Application for staff-assisted rate case in Polk County by Sunrise Utilities, L.L.C.*

Since January 1, 2015, one customer complaint was filed with the Commission. The customer complaint stated that a disconnect notice was not received prior to disconnection and attempts to make payments over the telephone were unsuccessful. The Utility's response to staff requests arrived after 90 days and indicated payments by the customers were returned due to non-sufficient funds. Since the response was late, it was recorded as an apparent violation of Rule 25-22.032, (6)(b) F.A.C., Customer Complaints, which requires utilities to respond to staff inquiries within 15 work days. Given the relatively low number of complaints filed with the Commission, staff does not believe any action should be taken against the Utility for its apparent Rule violation. However, the Utility should take steps to timely file any required responses to Commission complaints. All complaints filed with the Commission have been closed. Table 1-1, below summarizes the classification of complaints filed with the Commission.

Table 1-1

Type	Number of Complaints
Improper Disconnects	2
Improper Bills	4
Quality of Service	1

Staff notes that Alturas does not have a physical office location for customers to make payments or service inquiries. On October 19, 2015, the Utility notified staff that its daily customer service and repair operations were under new management. Additionally, the Utility has contracted with a bookkeeper in Bartow, Florida, which allows customers to make service requests and bill payments in person from 8:30 a.m. to 5:00 p.m. Monday through Friday.[12] Staff believes that these efforts taken by the Utility demonstrate a willingness to address customer satisfaction. Additionally, given that only one complaint has been filed since 2011, staff does not believe the Utility has systemic issues with respect to adequately addressing customer satisfaction. Therefore, staff believes that the Utility has satisfactorily attempted to address customer satisfaction.

Conclusion

The overall quality of service provided by Alturas should be considered unsatisfactory because the Utility has failed to address maintenance and repairs recommended by the PCHD in 2011. As such, staff believes the officers' salaries should be decreased by 25 percent.

[12]Document 06695-15, filed on October 20, 2015, in Docket No. 140219-WU.

Issue 2: What are the used and useful percentages (U&U) of Alturas water treatment plant and distribution system?

Recommendation: Staff recommends Alturas' water treatment plant and its distribution system should both be considered 100 percent U&U. Additionally, staff recommends a 31.77 percent adjustment for Excessive Unaccounted for Water (EUW) should be made to operating expenses for chemicals and purchased power. (Lewis)

Staff Analysis: Alturas' water system is served by a single 6-inch diameter well rated at 350 gpm. The raw water is injected with liquid chlorine prior to entering the 3,000-gallon hydropneumatic tank, and then pumped into the water distribution system. The Utility is permitted to withdraw an average of 34,200 gallons per day (gpd) up to 94,600 gpd peak. The treated water is then pumped into the water distribution system. According to the Utility, there are no fire hydrants and there was no growth in the service area during the last five years. During the previous SARC, both the water treatment plant and distribution system were deemed 100 percent U&U.

Water Treatment Plant and Distribution System Used &Useful

As noted above, the Commission found both the water treatment plant and distribution system to be 100 percent U&U in the prior SARC. There have been no major plant additions or growth in the last five years. Therefore, consistent with the prior Commission decision, the water treatment plant and distribution system should be considered 100 percent U&U.

Excessive Unaccounted for Water (EUW)

Rule 25-30.4325, F.A.C., describes EUW as unaccounted for water in excess of 10 percent of the amount produced. When establishing the Rule, the Commission recognized that some uses of water are readily measurable and others are not. Unaccounted for water is all water produced that is not sold, metered or accounted for in the records of the Utility. The Rule provides that to determine whether adjustments to plant and operating expenses, such as purchased electrical power and chemicals cost, are necessary, the Commission will consider all relevant factors as to the reason for EUW, solutions implemented to correct the problem, and whether a proposed solution is economically feasible. The unaccounted for water is calculated by subtracting both the gallons used for other purposes, such as flushing, and the gallons sold to customers from the total gallons pumped for the test year.

The Utility treated 6,294,431 gallons and sold 3,665,000 gallons of water for the test year. Alturas did not record any gallons used for other purposes. Therefore, the amount of unaccounted for water is 2,629,431 gallons (6,294,431 – 3,655,000). Ten percent of the gallons produced, (6,294,431 x .10) or 629,443 gallons is allowed per rule; therefore, the EUW is (2,629,431 - 629,443) 1,999,998 gallons. This divided by the total gallons produced (1,999,998/6,294,431) equates to 31.77 percent EUW.

Per staff's suggestion, the Utility contacted the Florida Rural Water Association (FRWA) and scheduled a survey of its distribution system. The Utility provided documentation of FRWA's test results, dated August 25, 2015, indicating that the Utility's plant master flow meter is

inaccurate and reading 20.8 percent faster than the actuals flow.[13] In its 2009 rate case, an EUW adjustment was not made because the master flow meter was not working properly and the Utility was working to address the problem with the master flow meter and possible leaks in the distribution system. Staff does not believe that Alturas has demonstrated an effort to address its on-going EUW issues in its current rate case. Although the Utility has joined the FRWA, the Utility has yet to provide documentation that the master flow meter has been replaced or repaired. Therefore, due to uncertainty regarding the current status of the master flow meter replacement, staff believes an adjustment should be made to operating expenses (chemicals and purchased power) due to EUW.

Conclusion

Staff recommends Alturas' water treatment plant and its distribution system should both be considered 100 percent U&U. Additionally, staff recommends a 31.77 percent adjustment for EUW should be made to operating expenses for chemicals and purchased power.

[13]Document 05581-15 filed on September 8, 2015, in Docket No. 140219-WU.

Issue 3: What is the appropriate allocation of common costs to Alturas?

Recommendation: The appropriate allocation of common costs to Alturas is 22 percent. (Golden, Vogel)

Staff Analysis: Alturas and its sister company, Sunrise Utilities, L.L.C. (Sunrise), receive services from several shared contractual service providers. During the test year, the Utility's allocation of the common costs varied for each of the contractual service providers. Commission practice is to allocate shared administrative and general expenses based on the number of ERCs.[14] In addition, the Commission previously approved this methodology for Alturas and Sunrise when the systems were owned by Keen Sales, Rentals, and Utilities. The appropriate allocation percentages are calculated as follows:

Table 3-1
Allocation Percentages

Name of System	Number of ERCs	Percentage of Allocation
Alturas Utilities, L.L.C.	69	22%
Sunrise Utilities, L.L.C.	247	78%
Total	316	100%

As shown above, Alturas represents 22 percent of the ERCs for both utilities. Therefore, staff recommends the shared reasonable and prudent common expenses should be allocated to the Alturas water system based on the allocated portion of 22 percent. This equitably reflects the distribution of costs between the two systems.

[14]Order Nos. 17043, issued on December 31, 1986, in Docket No. 860325-WS, *In re: Request by Southern States Utilities, Inc. for approval of test year ended 12/31/85 for rate increase in Seminole County*; Order No. PSC-01-0323-PAA-WU, issued on February 5, 2001, in Docket No. 000580-WU, *In re: Application for staff-assisted rate case in Polk County by Keen Sales, Rentals and Utilities, Inc. (Alturas Water Works)*; Order No. PSC-05-0442-PAA-WU, issued on April 25, 2005, in Docket No. 040254-WU, *In re: Application for staff-assisted rate increase in Polk County by Keen Sales, Rentals and Utilities, Inc.*; Order No. PSC-09-0716-PAA-WU, issued on October 28, 2009, in Docket No. 090072-WU, *In re: Application for staff-assisted rate case in Polk County by Keen Sales, Rentals and Utilities, Inc.*; Order No. PSC-13-0320-PAA-WU, issued on July 12, 2013, in Docket No. 120269-WU, *In re: Application for staff-assisted rate case in Polk County by Pinecrest Utilities, LLC*; and Order No. PSC-13-0327-PAA-SU, issued on July 16, 2013, in Docket No. 120270-SU, *In re: Application for staff-assisted rate case in Polk County by West Lakeland Wastewater, LLC.*

Issue 4: What is the appropriate average test year rate base for Alturas?

Recommendation: The appropriate average test year rate base for Alturas is $31,718. In the event the Utility is unable to issue customer deposit refunds and interest payments to former customers, staff recommends that the resulting total of the unclaimed refunds and associated accrued interest should be credited to contributions-in-aid-of-construction in the Utility's next rate proceeding. (Golden, Vogel)

Staff Analysis: The appropriate components of the Utility's rate base include utility plant in service, land, contributions-in-aid-of-construction (CIAC), accumulated depreciation, amortization of CIAC, and working capital. Alturas' rate base was last established by Order No. PSC-10-0380-PAA-WU in a 2009 SARC.[15] Staff selected the test year ended December 31, 2014, for the instant case. A summary of each component of rate base and the recommended adjustments are discussed below.

Pursuant to Rule 25-30.115, F.A.C., water and wastewater utilities are required to maintain their accounts and records in conformity with the 1996 National Association of Regulatory Utility Commissioners' Uniform System of Accounts (NARUC USOA). As will be discussed further in Issues 6 and 13, the Utility is not currently maintaining its books and records on a monthly basis as prescribed by the NARUC USOA. Commission audit staff determined that the Utility's accounting activities are compiled at the end of each calendar year by the Utility's officers and their Certified Public Accounting (CPA) firm to prepare the Utility's Annual Report and its Federal Tax Return. Consequently, a 2014 income statement and balance sheet were not available, and the 2014 Annual Report was not compiled before the end of the audit staff's field work. Audit staff used the Utility's 2009 through 2013 Annual Reports, 2013 Federal Tax Return, and other supporting documents to compile the Utility's rate base, capital structure, and net operating income for the test year ended December 31, 2014.

Utility Plant in Service (UPIS)

As discussed above, no rate base balances were available for 2014. Using the Utility's 2009 through 2013 Annual Reports, audit staff calculated a test year UPIS balance of $59,612. In the Utility's last SARC, with a test year ended October 31, 2009, the Commission approved and included $18,075 of pro forma plant additions, without retirements. The projects included installing a shed, rebuilding a master meter at the well, refurbishing a well pump, refurbishing the water tank and tank piping, installing a new blowoff at the tank, and installing new water meters. On August 8, 2011, the Utility filed documents with the Commission that supported an actual cost of $10,486 for the approved projects that were completed during 2010 and 2011. Commission staff reviewed and approved the Utility's filed documents and administratively closed the docket in that proceeding.

A review of the Utility's annual reports indicates that the Utility experienced a net operating loss in each year since the pro forma projects were completed in 2011. Specifically, the Utility reported net operating losses of $4,933, $5,375, and $6,142 for 2011, 2012, and 2013, respectively. In addition, audit staff calculated a loss of $8,096 for 2014. The increasing level of

[15]Order No. PSC-10-0380-PAA-WU, issued on June 5, 2010, Docket No. 090477-WU, *In re: Application for staff-assisted rate case in Polk County by Alturas Utilities, L.L.C.*

operating losses indicates that the $7,589 overstatement of UPIS was offset by other costs, and therefore, did not cause the Utility to exceed its authorized rate of return. However, staff believes it would be appropriate to adjust the rate base prospectively to correctly reflect the pro forma that was completed. The audit staff's starting balance of $59,612 only includes a portion of the completed pro forma projects. Based on audit staff's review, staff has increased UPIS by $7,068 to reflect the correct test year UPIS balance including all of the completed pro forma projects.

Audit staff noted that the previously approved pro forma projects did not include any plant retirements. The majority of the projects involves new plant additions or refurbishments, and do not require plant retirements. However, staff believes it would be appropriate to recognize plant retirements for the meter replacements. Staff attempted to calculate the retirements based upon the original cost of the meters, however, there is insufficient information at this time to determine the exact number of meters that were replaced. It is Commission practice to use 75 percent of the cost of the replacement as the retirement value when the original cost or original in-service date is not known. Accordingly, staff has decreased this account by $1,752 ($2,336 x .75 = $1,752) to reflect the plant retirements associated with the 2010 and 2011 meter replacements. No plant additions were made during the test year, therefore, no averaging adjustment is necessary.

Based on the adjustments shown above, staff's net adjustment to UPIS is an increase of $5,316 ($7,068 - $1,752 = $5,316). Staff recommends a UPIS balance of $64,928.

Land and Land Rights

The Commission approved a land balance of $500 in the Utility's 2009 SARC. Audit staff determined that there has been no activity related to land since the last case, therefore, no adjustments are necessary. Staff recommends a land and land rights balance of $500.

Non-Used and Useful Plant

As discussed in Issue 2, Alturas' water treatment plant and distribution system are considered 100 percent U&U. Therefore, a U&U adjustment is unnecessary.

Contribution in Aid of Construction (CIAC)

The Commission approved a CIAC balance of $18,637 in the Utility's 2009 SARC. Audit staff determined there has been no activity related to CIAC since that case, therefore, no adjustments are necessary. Staff recommends a CIAC balance of $18,637.

In addition, as will be discussed later in this recommendation, Alturas appears to be in violation of the Commission's Rules and regulations regarding customer deposits. The Utility is working with Commission staff to correct the apparent violations, however, the final results of those corrections are not yet known. In the event the Utility is unable to issue customer deposit refunds and interest payments to former customers, staff recommends that the resulting total of the unclaimed refunds and associated accrued interest should be credited to CIAC in the Utility's next rate proceeding.

Accumulated Depreciation

Audit staff calculated a test year accumulated depreciation balance of $34,230. Audit staff determined that no depreciation was recorded during 2011 and 2012. Therefore, audit staff calculated the annual accruals to accumulated depreciation beginning with the Utility's last SARC in 2009 through the end of the test year, using the prescribed rates set forth in Rule 25-30.140, F.A.C., and determined that accumulated depreciation should be increased by $5,623 to reflect the correct test year balance. In addition, staff decreased this account by a total of $2,204 to reflect the retirement of the replaced meters discussed above. Staff's retirement adjustment includes removal of $1,752 in accumulated depreciation for the retired meters, as well as removal of $452 in additional accumulated depreciation that continued to accrue during the years following the meter replacements ($1,752 + $452 = $2,204). Also, staff decreased this account by $811 to reflect an averaging adjustment. Staff's net adjustment to accumulated depreciation is an increase of $2,607, resulting in an accumulated depreciation balance of $36,837.

Accumulated Amortization of CIAC

The Commission approved an accumulated amortization of CIAC balance of $18,637 in the Utility's 2009 SARC, and determined that CIAC had become fully amortized as of February 10, 2004. As noted above, there has been no activity related to CIAC since the last case, therefore, no adjustments to amortization of CIAC are necessary. Although there is a net zero effect of having balances of $18,637 for CIAC and accumulated amortization of CIAC, these balances should still be maintained for accounting purposes. These balances represent contributions toward plant assets by the Utility's customers. When those plant assets are replaced and retired, a corresponding retirement to CIAC and accumulated amortization of CIAC will be required and therefore, staff recommends an accumulated amortization of CIAC balance of $18,637.

Working Capital Allowance

Working capital is defined as the investor-supplied funds that are necessary to meet operating expenses of the Utility. Consistent with Rule 25-30.433(2), F.A.C., staff used the one-eighth of the operation and maintenance (O&M) expense formula approach for calculating the working capital allowance. Applying this formula, staff recommends a working capital allowance of $3,127 (based on O&M expense of $25,015/8).

Rate Base Summary

Based on the foregoing, staff recommends that the appropriate average test year rate base is $31,718. Rate base is shown on Schedule No. 1-A. The related adjustments are shown on Schedule No. 1-B. Also, in the event the Utility is unable to issue customer deposit refunds and interest payments to former customers, staff recommends that the resulting total of the unclaimed refunds and associated accrued interest should be credited to CIAC in the Utility's next rate proceeding.

Issue 5: What is the appropriate rate of return on equity and overall rate of return for Alturas?

Recommendation: The appropriate return on equity (ROE) is 8.74 percent with a range of 7.74 percent to 9.74 percent. The appropriate overall rate of return is 8.53 percent. (Golden, Vogel)

Staff Analysis: No capital structure balance was available for 2014. Based on a review of the Utility's Annual Reports, audit staff initially determined that the Utility's capital structure is composed entirely of owners' equity because no debt or customer deposits were disclosed. However, audit staff could not determine the Utility's equity balance from its 2013 Annual Report or 2013 Federal Tax Return. Pursuant to Order No. PSC-05-0309-PAA-WU, that approved the transfer of Alturas to the current owner, the purchase price was $45,000 for the system.[16] The purchase price was paid with cash in several installments. Therefore, staff has increased common equity by $45,000 to reflect the owner's equity in the system. In addition, Alturas subsequently provided customer deposit records that indicated the Utility was holding $986 in customer deposits during the test year. Accordingly, staff increased customer deposits by $986 to reflect the Utility's customer deposit balance as of December 31, 2014.

The Utility's capital structure has been reconciled with staff's recommended rate base. The appropriate ROE is 8.74 percent based upon the Commission-approved leverage formula currently in effect.[17] Staff recommends an ROE of 8.74 percent, with a range of 7.74 percent to 9.74 percent, and an overall rate of return of 8.53 percent. The ROE and overall rate of return are shown on Schedule No. 2.

[16]Order No. PSC-05-0309-PAA-WU, issued on March 21, 2005, in Docket No. 040160-WU, *In re: Application for transfer of portion of Certificate No. 582-W by Keen Sales, Rentals, and Utilities, Inc. to Alturas Utilities, L.L.C., in Polk County*.
[17]Order No. PSC-15-0259-PAA-WS, issued on July 2, 2015, in Docket No. 150006-WS, *In re: Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.*

Issue 6: What are the appropriate test year revenues for Alturas' water system?

Recommendation: The appropriate test year revenues for Alturas' water system are $28,143. (Bruce)

Staff Analysis: At the time of staff's audit, the Utility had not closed its books for calendar year 2014, which is the test year in this docket. As a result, staff's adjustments are to the Utility's estimated test year revenues. Alturas estimated test year revenues of $26,138, which did not include any miscellaneous revenues. The Utility recorded five months of miscellaneous revenues during the test year, which totaled $75. Because no records were provided for the remaining seven months of the test year, staff estimated that a similar number of miscellaneous service events would occur throughout the remaining months and determined that additional miscellaneous revenues of $75 should be added. Therefore, test year revenues should be increased by $150. As discussed in Issue 7, the utility has taken steps to properly record miscellaneous revenues. During the test year, the Utility had a four year rate reduction that became effective on August 14, 2014. However, the Utility did not reduce the rates when the revised tariff was approved. Staff has verified that the rates were reduced in May 2015. The disposition of the overcollection of rate case expense is discussed in Issue 11. Based on staff's adjustments to miscellaneous revenues and the annualized reduced rates, service revenues should be increased by $1,855 to reflect service revenue of $27,993. Staff recommends that the appropriate test year revenues for Alturas' water system are $28,143 ($27,993 + $150).

Issue 7: What is the appropriate amount of operating expense?

Recommendation: The appropriate amount of operating expenses for the Utility is $28,395. Staff recommends that the Utility be required to file documentation in this docket by December 31, 2016, showing that the pro forma trihalomethane and haloacetic acid tests have been completed. The documentation should include a copy of the test results and final invoices. (Golden, Vogel)

Staff Analysis: As discussed in Issue 3, the Utility had not yet prepared its accounting records for 2014 at the time of staff's audit. Instead, the Utility provided audit staff with an Expense Summary schedule of actual and estimated expenses of $43,921, some invoices, and some cancelled checks. The Utility's sister company, Sunrise, has also filed an application for a SARC that is being processed concurrently under Docket No. 140220-WU. Audit staff noted that the majority of information used to verify Alturas' test year expenses involved shared operator services between the two Utilities or comingled banking operations due to severe cash flow problems. Based on a review of the available information for both Alturas and Sunrise, audit staff determined Alturas' test year operating expenses to be $34,234 for the test year ended December 31, 2014. In addition, staff made several adjustments to the Utility's operating expenses, as summarized below.

Subsequent to the audit, the Utility made several changes in its contractual service providers. The Utility also changed some procedures to improve the operation of the Utility and address some concerns discussed in staff's audit report and raised by customers. In response to several staff data requests, the Utility also provided additional documentation to support some previously unsupported expenses, some requested pro forma expenses, and some new pro forma expenses related to the Utility's efforts to improve its operations. Based on both the test year and supplemental information, staff made several adjustments to the Utility's operating expenses, as summarized below. In addition, staff made several adjustments in response to concerns raised by OPC in its June 11, 2015, letter, filed in this docket and at a December 9, 2015, noticed informal meeting.

Operation and Maintenance (O&M) Expenses

Salaries and Wages – Officers (603)

The Utility's Expense Summary does not include this account. The Utility currently has two officers; an administration officer and a president. The administration officer is the Utility owner and serves as the primary officer responsible for overseeing the daily operations of the Utility. The Commission previously approved an annual officer's salary of $12,000 for Alturas' sister company, Sunrise, in its last SARC.[18] At that time, the owner's duties included interfacing with the Utility's contractual manager on the day-to-day operations, reviewing the monthly meter reading reports, reviewing monthly bank statements, preparing the annual report, and compiling financial data for the CPA to prepare the federal income tax return. Currently, the owner works with the Utility's four contractual service providers to oversee the financial and operational functions of Alturas and Sunrise.

[18]Order No. PSC-12-0533-PAA-WU, issued on October 9, 2012, in Docket No. 110238-WU, *Re: Application for staff-assisted rate case in Polk County by Sunrise Utilities, LLC.*

As discussed in Issue 3, staff recommends that common costs be allocated between Alturas and Sunrise based on ERCs, with 22 percent allocated to Alturas and the remaining 78 percent allocated to Sunrise. Staff determined that the appropriate allocation of the administration officer/owner's salary to Alturas is $2,640 ($12,000 x .22 = $2,640). Accordingly, staff increased this account by $2,640 to allocate the 22 percent of the $12,000 salary to Alturas.

During the test year, the Utility also paid $750 to the Utility's president who assists the owner with utility matters as needed, including annual work related to preparation of the Annual Report and income tax forms. Staff increased this account by $165 to reflect the appropriate 22 percent allocation of the president's salary to Alturas ($750 x .22 = $165).

In its June 11, 2015 letter, OPC suggested that the administration officer/owner's salary should be re-evaluated due to the severe accounting record deficiencies and the owner's lack of response to several warning letters from the PCHD. As discussed in Issue 1, staff recommends that a 25 percent penalty be applied to the officers' salaries for unsatisfactory quality of service. The penalty was applied to the administration officer/owner's salary of $2,640, resulting in a $660 penalty decrease. The penalty was also applied to the president's salary of $165, resulting in a $41 decrease. Therefore, staff decreased this account by a total of $701 to reflect a 25 percent reduction in both officers' salaries allocated to Alturas. The resulting officers' salaries allocated to Alturas following the penalty reduction are $1,980 for the administration officer/owner and $124 for the president. As additional information, the total combined salaries for Alturas and Sunrise following all of staff's adjustments are $9,000 for the administration officer/owner and $563 for the President.

In summary, staff's total adjustment to this account is an increase of $2,104 ($2,640 + 165 – 701 = $2,104). Staff recommends salaries and wages – officers' expense of $2,104.

Purchased Power (615)

The Utility's Expense Summary reflects $1,542 in this account. The Utility was only able to provide nine electric power invoices for the test year. Audit staff was able to substantiate the amounts for two of the three missing invoices using payment information included on subsequent invoices. Also, audit staff estimated the missing December 2014 invoice amount by using the average of the billed amounts for January through November 2014. Consequently, staff decreased this account by $104 to reflect the correct test year purchased power expense, resulting in an adjusted balance of $1,438. The $104 adjustment includes removal of $20 in late payment fees that are not recoverable through the Utility's rates.

In addition, as discussed in Issue 2, staff is recommending a EUW adjustment of 32 percent. Therefore, staff decreased the adjusted balance by $460 ($1,438 x .32 = $460) to reflect a 32 percent EUW adjustment. Staff's total adjustment is a decrease of $564. Therefore, staff recommends purchased power expense of $978.

Chemicals (618)

The Utility's Expense Summary reflects chemicals expense of $772. Audit staff verified this amount and determined it was appropriate for the test year. However, as discussed in Issue 2, staff is recommending a EUW adjustment of 32 percent. Accordingly, staff decreased this account by $247 to reflect a EUW adjustment of 32 percent ($772 x .32 = $247), resulting in a recommended chemicals expense of $525.

Contractual Services – Overview

Subsequent to the test year, the Utility made several changes in its contractual service providers that will affect the contractual service expenses going forward. The changes are intended to address concerns raised by staff and the Utility's customers, and improve the Utility's operations going forward. Staff believes these changes will be beneficial to both the Utility and its customers. Accordingly, staff believes it would be appropriate to make some pro forma adjustments to reflect those changes. Due to the level of changes made, staff believes it will be helpful to provide an overview of the changes between the test year and current year's contractual service providers. It should be noted that the Utility does not have written contracts for any of the current contractual service providers.

As background information, the Utility began the test year with four part-time contractual service providers; an office manager, management assistant, billing assistant, and plant operator. The contractual office manager and plant operator services also included on-call work for emergency purposes. The first office manager left abruptly in the middle of the test year, causing the management assistant to immediately assume the office manager's duties, in addition to continuing the management assistant duties. Due to cash flow shortages, the Utility did not replace the management assistant, and only requested assistance from the billing assistant a few times during the test year. Consequently, the Utility only operated with an office manager and plant operator for part of the test year and much of 2015. It appears that the abrupt management changes during the test year and limited staffing may have contributed to many of the billing and service issues raised by the Utility's customers.

In September 2015, the second office manager discontinued working for the Utility. The Utility subsequently hired three additional contractual service providers; an accountant, a Utility service technician, and the former billing assistant. The Utility expanded the duties of the new contractual service providers to cover more utility functions than were covered by the previous workers. The expanded duties and specific skills of the new contractual service providers are expected to improve the Utility's operations and customer service.

In order to reduce overhead costs, the Utility owner never established a physical office in the service area. Previously, the only option for customers who wanted to pay their bill in person was to go to the office manager's house to drop off the payment or arrange for the office manager to pick up the payment at their house. The recently hired contractual accountant has an office near the service area and has agreed to accept customer payments at that location in order to help address this concern. The contractual accountant now serves as the office manager and bookkeeper for the Utility. The contractual accountant's services include: updating and maintaining the Utility's books and records; preparing and issuing monthly bills; preparing the monthly billing detail reports; collecting customer payments and deposits; providing a location

where customers may mail or drop-off payments; providing a utility drop-box where customers may drop off payments during non-business hours; checking for payments daily during the work week; transmitting customer payments electronically to the bank on a daily basis when received during the work week; reviewing payment records and assisting with service disconnections due to non-payment; accepting customer calls regarding billing questions; handling customer complaints regarding billing issues; and assisting with preparing the financial information for the Utility's Annual Report. The accountant's contractual fees will be discussed under the contractual services – professional (631) section below.

The contractual utility service technician's duties include assisting with general system repairs, customer service repairs, new customer connections, service disconnections, monthly meter reading, mowing, answering the Utility's emergency cell phone, and being on-call 24 hours a day, 7 days a week. The utility service technician's meter reading fees will be discussed in contractual services – billing (630), and the fees for the remaining duties will be discussed in the contractual services – other (636).

During the test year, the Utility hired a contractual billing assistant to analyze the monthly accounts receivable and assist the office manager with collection of past due accounts for both Sunrise and Alturas. Due to cash flow shortages, the Utility only requested service from the billing assistant during part of the test year. In September 2015, the Utility re-hired the contractual billing assistant with expanded duties. The billing assistant's current duties include: answering the Utility's main phone number; assisting with customer complaints; assisting with reviewing and correcting the Utility's customer deposit records; assisting with researching customer records as needed; analyzing the monthly accounts receivable; and assisting with collection of past due accounts. The billing assistant's fees will be discussed in the contractual services – billing (630) section below.

Contractual Services - Billing (630)

The Utility's Expense Summary reflects $3,169 in this account for meter reading provided by the former office manager and bill collection services provided by the billing assistant. In September 2015, the Utility hired a contractual utility service technician to begin providing the monthly meter reading services. The utility service technician's contractual fee for meter reading is $65 per month or $780 per year. The current fee is the same as the audited test year meter reading expense. In addition, staff believes this is a reasonable meter reading expense for Alturas. Therefore, no adjustments are needed.

During the test year, the Utility hired a contractual billing assistant to review the monthly accounts receivable and assist with the collection of past due accounts for both Alturas and Sunrise at a monthly fee of $400, for an annual total of $4,800. However, the Utility only incurred $2,100 of the contracted $4,800 fees for Alturas and Sunrise combined. The Utility indicated that it had only requested billing assistance from this vendor for part of the test year due to cash flow shortages.

As discussed above, in September 2015, the Utility re-hired the contractual billing assistant and indicated that the previous duties would be expanded to include answering the Utility's main phone number, assisting with customer complaints, and assisting with reviewing and correcting the Utility's customer deposit records. The new contractual fee is still $400 per month, which

covers approximately 40 hours of work per month at $10 per hour, for an annual total of $4,800 for Alturas and Sunrise combined. The Utility has not fully supported its request for the increase in this expense over the audited test year expense. However, staff confirmed that the billing assistant is currently working with the office manager to review delinquent accounts and address customer complaints. Staff believes it will be beneficial to both the Utility and its customers to have a billing assistant available on a regular basis to assist customers with service complaints. Staff believes the hourly rate of $10 is reasonable. Also, staff believes the request for 40 hours of work per month is reasonable considering that the work will cover both Alturas and Sunrise. At the December 9, 2015, noticed informal meeting, OPC requested that the contractual worker expenses be reviewed to avoid any duplication of duties. Based on staff's review, it does not appear that there will be a duplication of duties between the billing assistant and office manager. Staff determined that the appropriate allocation of the contractual billing assistant's expense to Alturas is $1,056 ($4,800 x .22 = $1,056). Staff decreased this account by $1,333 to remove the unsupported expenses in this account and reflect a pro forma increase in the contractual billing services expense.

Staff's total adjustment to this account is a decrease of $1,333. Therefore, staff recommends contractual services – billing expense of $1,836.

Contractual Services - Professional (631)

The Utility's Expense Summary reflects $400 in this account for preparation of the Utility's Annual Report and Federal Tax Return by its CPA. Audit staff verified that this amount is appropriate for the test year, and that no adjustments are necessary.

As discussed in Issue 4, Rule 25-30.115, F.A.C., requires that water and wastewater utilities maintain their accounts and records in conformity with the 1996 NARUC USOA. Audit staff determined that the Utility was not maintaining its books and records on a monthly basis as required. During the test year, the Utility did not have any employees or contractual service providers specifically hired to work on the Utility's day-to-day bookkeeping operations. Therefore, in the May 1, 2015 Staff Report, staff recommended a pro forma adjustment to include an allowance for contractual bookkeeping expense to assist the Utility in meeting the rule requirement going forward.

Subsequently, in September 2015, the Utility hired a contractual accountant to handle the Utility's bookkeeping, billing, payment collections, billing inquiries, and billing complaints. As of the end of January 2016, the Utility had not yet begun providing any accounting records to the accountant to begin maintaining the Utility's books and records. Due to the severe accounting deficiencies and the Utility's difficulty in complying with both audit and technical staffs' requests for accounting supporting documentation during this case, staff believes it will be beneficial to the Utility and its customers for the Utility to allow a trained accountant to handle the Utility's day-to-day bookkeeping activities. Further, staff believes that properly maintained accounting records may help the Utility to better monitor and manage its cash flow. Therefore, despite the Utility's delay in implementing this process, staff believes it would be appropriate to make a pro forma adjustment to recognize the contractual bookkeeping expense going forward.

By a letter dated January 15, 2016, the contractual accountant estimated that the initial set-up fee for Alturas will be $250, for setting up the Utility's books and bringing forward the beginning

balances. After the set-up is complete, the monthly fee will be $100 per month, which equals $1,200 per year. Because the initial set-up fee is non-recurring in nature, staff believes it would be appropriate to amortize that portion of the bookkeeping expense over a five-year period, resulting in an annual expense of $50 ($250 / 5 = $50). Therefore, staff increased this account by $1,250 to reflect the pro forma increase for the recurring annual bookkeeping fees of $1,200 and the non-recurring fees of $50.

In addition, the Utility has requested recovery of $4,247 in outstanding legal fees related to Alturas' defense in a 2013 law suit filed by the Utility's former contract operator, Blount Utilities, Inc. (Blount), for outstanding payments that occurred prior to the test year. The outstanding legal fees were due in full before the end of 2015. On July 22, 2014, a Judgment was issued against Alturas for $3,960 by the Tenth Judicial Circuit Court in favor of Blount for the uncontested outstanding balance owed for contractual services performed by Blount prior to the test year. The parties subsequently reached a settlement agreement regarding a payment plan for the balance owed, and payments of $300 per month started on August 2014, which are to continue until the balance is extinguished. The outstanding payable balance to Blount was approximately $2,700 as of December 31, 2014, the end of the test year.

In order to determine if it is appropriate to allow recovery of utility litigation costs from the ratepayers, the Commission generally considers whether the litigation resulted in a benefit to the customers, whether the customers gained a benefit that would not have occurred absent the litigation process, and the materiality of the litigation costs. For example, if a utility engaged in legal action to oppose government required plant improvements that it deemed to be unnecessary and won the law suit, the customers would receive the direct benefit of a lower rate base and thus lower rates. In the instant case, staff does not believe the litigation resulted in any direct benefit to the customers. The litigation was the result of one of the Utility's former managers not paying the plant operator in a timely manner for services rendered. The Utility was successful in receiving a lower interest rate as a result of the litigation. However, since Commission practice is to disallow recovery of late payment fees or interest charges resulting from untimely payments, the reduced interest rate is a direct benefit to the stockholders/owners rather than the customers. In addition, the interest savings is not sufficient to offset the litigation costs. Consequently, the legal action only served to increase the Utility's expenses rather than reduce them to the benefit of the customers. Based on the above, staff does not believe it would be appropriate to require the customers to pay the litigation costs.

Staff reviewed the Utility's last SARC and recent annual reports to determine if the Utility incurred any other legal fees in recent years that would be more representative of routine, recurring legal services. Based on the information available, it appears that the Utility has not incurred any other legal fees in recent years.

Therefore, staff's total adjustment to this account is an increase of $1,250 to include the new contractual accountant's bookkeeping services. Staff recommends contractual services – professional expense of $1,650.

Contractual Services – Testing (635)

The Utility's Expense Summary does not include this account. Audit staff determined the Utility incurred $1,465 in testing expense for the test year. Accordingly, staff increased this account by $1,465.

In addition, the Utility was required by the PCHD on behalf of the DEP to conduct triennial water tests by the end of 2015. The Utility provided invoices from the contract operator totaling $3,310 for the triennial tests. Therefore, staff increased this account by $1,103 ($3,310 / 3 = $1,103) to include a pro forma adjustment to reflect the three-year amortization of the triennial water test costs.

Finally, the Utility requested a pro forma increase to cover $1,900 in testing expenses for additional trihalomethane (TTHM) and haloacetic acid (HAA5) testing required by the PCHD on a quarterly basis beginning in the last quarter of 2015 and continuing through the third quarter of 2016. The first quarter's tests have been completed and it is anticipated that the second quarter's test will be completed prior to implementation of any rates approved by the Commission in this case. According to the operator's invoices, the cost for the first quarter's tests is $475 and the estimated cost for the remaining three quarters is $1,425, for a total of $1,900. The Utility's operator also provided documentation from the PCHD to support that the additional testing is required. The additional testing requirement was caused by the Utility exceeding the TTHM limit on one test, and therefore, is not part of the Utility's normally recurring tests. Rule 25-30.433(8), F.A.C., requires that non-recurring expenses be amortized over a five-year period unless a shorter or longer period of time can be justified. Amortizing the $1,900 testing expense over a five-year period results in an annual increase of $380 in the Utility's testing expense. Due to the serious nature of this testing requirement, staff believes it warrants inclusion in this rate proceeding.

In accordance with Commission practice, staff calculated a Phase II revenue requirement for the pro forma testing that will not be completed until the second and third quarters of 2016 and determined that the Phase II revenue requirement would be only $201 or 0.69 percent above the Phase I revenue requirement. If all of the pro forma testing expense is included in Phase I, rate case expense can be reduced by a total of $41 or approximately $10 per year over the four-year amortization period due to elimination of the additional customer noticing that would be required upon implementation of the Phase II rate increase. Although pro forma plant additions and expenses are often addressed using a phased approach, staff believes it would be appropriate to include the pro forma testing expenses in the initial revenue requirement in this case because of the minimal impact of the pro forma testing expense on the initial revenue requirement, as well as the additional benefit of reducing rate case expense. Therefore, staff increased this account by $380 to reflect a pro forma increase to cover the additional TTHM and HAA5 testing expense. Staff recommends that the Utility be required to file documentation in this docket by December 31, 2016, showing that the tests have been completed. The documentation should include a copy of the test results and final invoices. However, staff does not believe it is necessary to hold the docket open until this information is filed since the PCHD is monitoring the Utility's completion of these tests and the test results.

Staff's total adjustment to this account is an increase of $2,948. Therefore, staff recommends contractual services – testing expense of $2,948.

Contractual Services - Other (636)

The Utility's Expense Summary reflects $19,545 in this account broken down by $5,950 for contractual office management; $6,855 for contractual utility operations; and $6,740 for supplies, maintenance and repairs. In September 2015, the Utility hired a contractual accountant to take over the majority of the office management duties. Staff confirmed that the contractual accountant has charged Alturas and Sunrise a combined fee of $1,200 per month beginning September 10, 2015 through January 10, 2016. It was initially expected that the $1,200 fee would only be charged for the first three months for additional work required to learn the billing system, bring the billing records up-to-date, and address unresolved billing inquiries and complaints. However, the workload has not yet decreased as expected. Consequently, the $1,200 per month fee will continue until the office begins to operate more smoothly, and then will decrease to $800 per month thereafter. At this time, it is expected that the $1,200 per month fee will be needed through May 2016. In addition to the monthly fee, the contractual accountant will also be reimbursed for any additional costs incurred, such as postage and utility office supplies.

Because the additional $400 per month fee is considered to be temporary and part of the initial set-up cost under the new office management arrangement, staff believes it would be appropriate to allow recovery of those costs as non-recurring expenses over a five-year period. The total non-recurring expense for Alturas and Sunrise combined is $3,600 ($400 x 9 months = $3,600), which translates to an annual expense of $720 when amortized over five years. Staff determined that the appropriate allocation of the non-recurring contractual office management fees to Alturas is $158 ($720 x .22 = $158). The remaining $800 per month fee should be treated as a recurring expense, which equals $9,600 per year. The appropriate allocation of the recurring contractual office management expense to Alturas is $2,112 ($9,600 x .22 = $2,112). Alturas' total contractual office management expense allocation, including both the recurring and non-recurring fees, is $2,270. Therefore, staff decreased this account by $3,680 to reflect the pro forma change in contractual office management expense ($2,270 - $5,950 = -$3,680).

In its June 11, 2015, letter, OPC expressed concern about the Utility's procedures for handling cash payments from customers. Specifically, OPC expressed concern about whether or not the cash payments are being properly recorded against accounts receivable, whether or not the cash collections of miscellaneous service charges are being recorded and included in test year revenues, and whether or not the accounts receivable aging reports accurately reflect these collections.

Staff determined that the Utility includes the type of payment in its billing records when recording monthly bill payments. For example, the records indicate if the payment was made by cash, check, money order, or money transfer. In addition, the Utility's customer deposit records indicate if the initial customer deposits were paid by cash, check, money order, or money transfer.

The area of concern appears to be limited to the handling of miscellaneous service charges. The Utility owner acknowledged that he had authorized the contractual office manager and office manager assistant to keep any miscellaneous service charges collected as payment for their work

related to the customer disconnections and reconnections. Because miscellaneous service charges are designed to cover the additional costs incurred to provide a specific miscellaneous service, it is acceptable for the Utility to use those funds to pay for the contractual work needed to accomplish those services. However, it is incorrect for the Utility to omit the miscellaneous service charge assessments and payments from the billing records and revenues.

In addition, staff attempted to review the Utility's billing records to determine whether or not the Utility properly assessed the miscellaneous service charges in accordance with Commission rules and the Utility's approved tariff. The Utility was not able to provide all of the records that are needed to complete this type of review. The Utility owner informed staff that the former office manager had deleted 11 months of billing records in error. Therefore, the only records available during that time period are the specific reports that were printed prior to the deletion. Based on the available records, staff believes that the Utility does experience some issues with delinquent payments. However, staff was unable to determine if the customers were given proper disconnection notices and assessed the miscellaneous service charges within the proper timeframes prescribed by Commission rules during the test year. Also, staff notes that the delinquent payments appear to be more of an issue for Sunrise than Alturas.

Based on staff's review, it appears the Utility may be in apparent violation of the following rules and statute. Rule 25-30.335(7), F.A.C., which requires that utilities shall maintain a record of each customer's account for the most current two years so as to permit reproduction of the customer's bills during the time that the utility provided service to that customer. Rule 25-30.320, F.A.C., which sets forth the guidelines that utilities must follow when refusing or discontinuing service, including disconnection for non-payment of bills. Section 367.081, F.S., requires that a utility may only charge rates and charges that have been approved by the Commission.

Staff does not believe show cause proceedings should be initiated at this time for the apparent violations related to the maintenance of customer records and handling of miscellaneous service charges. It appears that the Utility has taken steps to correct these issues. The Utility indicated that it has discontinued accepting customer payments in the field. As discussed previously, customers now have the additional option of paying in person or using a drop box at the contractual accountant's office. Based on staff's review, it appears that the Utility has taken the necessary steps to ensure that future miscellaneous service charges are correctly recorded. Also, the separation of duties between the office manager and utility service technician working in the field allows for better oversight of the handling of cash collections. Finally, under the Utility's current procedures, customers are first sent a letter regarding their past due payment, and then sent a second notice regarding disconnection only if the bill remains unpaid. Providing a past due notice prior to a disconnection notice goes beyond what it required in the Rule and helps to demonstrate the Utility's willingness to work with customers to resolve payment issues prior to disconnecting service. However, staff believes Alturas should be put on notice that if the Utility fails to maintain its customer records or to properly account for miscellaneous service charges in compliance with Commission regulations in the future, Alturas may be subject to a show cause proceeding by the Commission, including penalties.

As noted above, the Utility included $6,855 in this account for contractual utility operations. Staff determined that the appropriate contractual operator's expense for Alturas is $4,288, which includes the plant operator's monthly fees, inspection reports, repairs, and flushing. In its June 11, 2015, letter, OPC expressed a concern about possible duplication of mowing expenses because the test year included charges for mowing by the office manager and plant operator. As discussed above, the new contractual utility service technician will be responsible for mowing the plant site going forward. Therefore, staff did not include any mowing expense in the $4,288 operator's expense calculation. Although the utility service technician will be assisting with repairs in the field going forward, staff believes there will still be a need for the operator to make utility repairs related to the plant. Consequently, staff does not believe a reduction to the repair portion of the operator's expenses is necessary. The operator's monthly fees are allocated between Alturas and Sunrise based on ERCs. The inspection report, repair, and flushing expenses are based on direct costs for Alturas. Staff decreased this account by $2,567 to reflect the appropriate contractual operator's expense ($4,288 - $6,855 = $2,567).

The Utility's Expense Summary reflected $6,740 for supplies, maintenance, and repairs. The Utility's total includes test year repairs of $1,019 based on four repair invoices for electrical plant repairs and meter repairs. In its June 11, 2015, letter, OPC questioned whether it was reasonable and prudent for the Utility to make four chlorine pump repairs in one year, and whether the repair costs should be treated as non-recurring expenses. According to information provided by the Utility's contract operator, the chlorine pump required repairs in January and April 2014 due to calcium build up, in May 2014 due to a lightening strike, and in June 2014 due to a hole in a discharge tube. Staff believes it is reasonable to expect that the Utility may require this level of repairs on an annual basis. Therefore, staff does not believe it is necessary to amortize any of the test year repairs as non-recurring.

As noted above, the Utility's Expense Summary also includes expenses related to chemicals, testing, and miscellaneous expenses. Audit staff reclassified those expenses to the correct expense accounts. In addition, audit staff determined that some expenses were unsupported and should be removed. Accordingly, staff decreased this account by $5,721 ($1,019 - $6,740 = -$5,721) to reflect the appropriate repair expense for the test year.

In its June 11, 2015, letter, OPC noted that the Alturas test year expenses included an invoice for $225 for checking meters, but that only $56 of that expense was for checking meters for Alturas. The remaining $159 was for checking meters for Sunrise. OPC proposed that $159 should be removed from the Alturas expenses. Staff agrees that it would be appropriate to reclassify $159 of the meter testing expense to Sunrise. Therefore, staff decreased this account by $159.

In September 2015, the Utility hired a contractual utility service technician to assist with general system repairs, customer service repairs, new customer connections, service disconnections, monthly meter reading, mowing, answering the Utility's emergency cell phone, and being on-call 24 hours a day, 7 days a week. As discussed above under Account 630 – Contractual Services – Billing, the utility service technician's contractual fee for meter reading is $65 per month or $780 per year. In addition to the meter reading fees, the Utility indicated that it intends to pay this contractual service worker $250 per week for 25 hours of work at an hourly rate of $10 for the remaining work duties. This results in an annual expense of $13,000 for Alturas and

Sunrise combined for the remaining field work and on-call duties. In addition, the Utility has requested a transportation expense allowance for this contractual service worker, which is discussed in more detail below under Account 650 – Transportation Expense.

The Utility has not fully supported its request for this level of contractual service fees. However, audit staff did verify test year expenses for the former office manager and office manager assistant related to some of these duties. In addition, the Utility provided several invoices for work performed by a new utility service technician in September and October 2015. Staff also confirmed that the Utility currently has a contractual service worker performing these job duties. Staff believes it will be beneficial to both the Utility and its customers to have a contractual utility service technician available on a regular basis to assist customers with service issues and to work on utility maintenance. Staff believes the hourly rate of $10 is reasonable and comparable to fees approved for other utilities. Also, staff believes the request for 25 hours of work per week is reasonable considering that the work will cover both the Alturas and Sunrise service territories. Consequently, staff increased this account by $2,860 to reflect Alturas' allocation of this expense ($13,000 x .22 = $2,860).

Finally, as discussed above, a Judgment was issued against the Utility for $3,960 for outstanding payments owed to Blount for contractual services related to the plant operation and maintenance. The Utility has requested consideration of the outstanding balance and monthly payments of $300 in the instant case. Although the Judgment and payment plan were finalized during the 2014 test year, the outstanding balance is for work performed by Blount prior to the test year. Historically, the Commission has determined that the recovery of past expenses from current customers constitutes retroactive ratemaking and is disallowed. Accordingly, staff does not believe it would be appropriate to recognize the past amounts owed to Blount in the instant proceeding.

Staff's net adjustment to this account is a decrease of $9,267 (-$3,680 - $2,567 - $5,721 -159 + 2,860 = -$9,267). Therefore, staff recommends contractual services – other expense of $10,278.

Transportation Expense (650)

The Utility's Expense Summary reflects $1,233 in this account. Audit staff could not verify how this amount was determined. Staff determined that the former office manager's expense included mileage reimbursements of approximately $14 for Alturas and $97 for Sunrise during January through May 2014. The expense was primarily related to mileage incurred conducting customer disconnections and reconnections, and was calculated based on a mileage rate of $0.50 per mile. The second office manager during the test year did not claim any mileage, but expressed concern about having to use her personal vehicle for utility work at her own expense.

In its January 26, 2016, letter, the Utility requested a transportation expense for the contractual utility service technician of $75 per month, or $900 annually, for Sunrise and Alturas combined. The Utility did not provide any documentation to support this request, such as records of any recent mileage reimbursements or written contracts indicating that transportation expense will be provided. However, in consideration of the Utility's previous practice of reimbursing the former office manager's mileage expense and the physical distance between the Alturas and Sunrise service areas, staff believes it would be appropriate to include a mileage allowance. Also, it

appears that the lack of full reimbursement of additional expenses incurred by the Utility's contractual service workers may be a contributing factor in the high level of turnover experienced by Alturas and Sunrise. Inclusion of a mileage allowance may help the Utility retain its contractual service workers longer, thereby improving the consistency and stability in the Utility's field operations.

The Utility requested $75 per month transportation expense would allow reimbursement of approximately 34 miles per week at the test year mileage rate of $0.50 per mile. The Alturas and Sunrise service territories are located approximately 18 miles a part. Staff believes the majority of the utility service technician's work will be conducted within each Utilities' service territory with minimal driving required. However, on occasion it will be necessary for the utility service technician to drive between the Alturas and Sunrise service territories or to a store to purchase parts for repairs. Staff believes the Utility's requested expense should be sufficient to cover the transportation expense for both the more frequent in-territory driving, as well as the less frequent out-of-territory driving. Staff determined that the appropriate allocation of the transportation expense to Alturas is $198 ($900 x .22 = $198). The remaining $702 will be allocated to Sunrise. Consequently, staff decreased this account by $1,035 to remove the unsupported test year expenses and reflect a pro forma transportation expense increase. Staff recommends transportation expense of $198.

Insurance Expense (655)

The Utility's Expense Summary reflects $1,576 in this account. Staff increased this account by $31 to reflect the current year's general liability insurance premium, and recommends insurance expense for the test year of $1,607.

Regulatory Commission Expense (665)

The Utility's Expense Summary does not include this account. The Utility is required by Rule 25-22.0407, F.A.C., to provide notices to its customers of the customer meeting and notices of final rates in this case. For noticing, staff estimated $55 for postage expense, $34 for printing expense, and $5 for envelopes. This results in $94 for the noticing requirement. The Utility paid a $1,000 rate case filing fee.

The Utility also provided an invoice for accounting fees of $450 for work performed by the Utility's CPA related to the SARCs for both Alturas and Sunrise. The work performed was similar for both Utilities. Therefore, staff believes it would be appropriate to allow Alturas to recover half or $225 of the accounting expense and allow Sunrise to recover the remaining $225 of rate case related accounting expense. In addition, the Utility provided invoices for $800 in additional work performed by the Utility's contract operator to assist with the Alturas SARC, such as answering staff data requests related to plant operations and attending the customer meeting. Staff has reviewed the invoices and believes it would be appropriate to allow recovery of these expenses in rate case expense. Pursuant to Section 367.0816, F.S., rate case expense is amortized over a four-year period. Based on the above, staff recommends total rate case expense for the instant case of $2,119 ($94 + $1,000 + $225 + $800), which amortized over four years is $530. Staff's total adjustment to this account is an increase of $530, resulting in a recommended regulatory commission expense of $530.

Bad Debt Expense (670)

The Utility's Expense Summary reflects $516 in this account. During the audit, the Utility provided a list of Alturas and Sunrise accounts that were written-off during the test year. Only one account was written-off for Alturas in the amount of $671, which equals 2.38 percent of the test year revenues or 2.16 percent of staff's recommended revenue requirement. In its June 11, 2015, letter, OPC expressed concern that Sunrise's bad debt expense is excessive, but did not discuss Alturas' bad debt expense. The Utility did not provide any supporting documentation showing how it calculated the bad debt write-offs, but did acknowledge that the test year bad debt expense included multiple years of bad debt write-offs.

Commission practice is to calculate bad debt expense using a three-year average, typically based on the test year plus two years of annual report data. It appears that the bad debt expense for the two years prior to the test year may have included multiple years of write-offs as well. Therefore, staff is unable to calculate a reliable three-year average using the traditional method. As an alternative, staff believes it would be appropriate to calculate an average bad debt expense based solely on the test year expense. This approach results in a bad debt expense of $224 ($671 / 3 = $224), that is 0.72 percent of staff's recommended revenue requirement.

At the December 9, 2015, noticed informal meeting, OPC indicated that it believes the large write-offs may be the result of errors in the recording of cash payments and poor bookkeeping practices, and that bad debt expense should not exceed 1 percent. Staff reviewed a sample of 15 SARCs, which had bad debt expense ranging from zero to over 4 percent, with 60 percent of the sample falling below the 1 percent range and 27 percent of the sample falling in the 0.50 to 1 percent range. Therefore, staff believes a bad debt expense of 0.72 percent falls within a reasonable range. Although staff is not opposed to OPC's 1 percent suggestion, that approach would actually increase the bad debt expense for Alturas above the amount recommended by staff. Based on staff's review of the available billing records, it appears that Alturas has a lower incidence of high delinquent balances than Sunrise, and therefore, would be expected to have a lower bad debt expense percentage. In an effort to provide as much uniformity in the ratesetting methods used for both companies, staff believes it would be more appropriate calculate a specific bad debt expense for each company based on the test year data. Based on the above, staff decreased this account by $292, and recommends a bad debt expense of $224.

Miscellaneous Expense (675)

The Utility's Expense Summary reflects $2,201 in this account. Staff decreased this account by $260 to reflect the appropriate test year miscellaneous expense for the Utility's annual permit and license renewal fees, cell phones, postage, and office supplies. Staff used the Utility's direct actual expense for the PCHD annual drinking water permit, the SWFWMD annual water permit, and the Department of State's Division of Corporation's annual filing fee. In addition, staff used the ERC allocation method to allocate the common miscellaneous expenses related to the Utility's cell phone, postage, and office supplies.

In its June 11, 2015, letter, OPC noted the Utility's test year miscellaneous expense included additional work performed by the contractual plant operator to assist with the transition between office mangers. OPC believes this is a non-recurring expense that should not be included in setting future rates. Staff agrees that this work is outside the scope of the operator's regularly

recurring duties, however, staff believes it would be more appropriate to amortize the non-recurring expense over a five-year period consistent with Rule 25-30.433(8), F.A.C. The operator's expense was $740 for Sunrise and Alturas combined. Staff increased this account by $33 to reflect Alturas' amortized allocation of that expense ($740 / 5 = $148; $148 x .22= $33).

In August 2015, the Utility became a member of the Florida Rural Water Association (FRWA) and provided proof of payment of the Utility's annual membership dues. Therefore, staff increased this account by $163 to reflect a pro forma adjustment for the Utility's annual FRWA membership dues. Staff believes the Utility should be reminded that the membership dues included in the Utility's revenue requirement are intended to serve as annual recurring expense for the purpose of renewing the Utility's FRWA membership each year.

In addition, staff increased this account by $30 to make a pro forma adjustment to reflect Alturas' amortized allocation of the Utility's purchase of a billing software update, an additional billing software license, and billing software training for the contractual office manager. Finally, staff increased this account by $17 to make a pro forma adjustment to reflect Alturas' amortized allocation of an electronic bank deposit machine that enables the contractual office manager to electronically deposit customers payments on the business day the payments are received. The Utility made these pro forma purchases in an effort to improve the Utility's billing and collection practices. Therefore, staff believes it would be appropriate to make these pro forma adjustments and allow the Utility to recover these expenses as non-recurring expenses over a five-year period. Staff's net adjustment to this account is a decrease of $64 (-$260 + 33 + 163 + 30 + 17 = -$64), resulting in a recommended miscellaneous expense of $2,137 for the test year.

Operation and Maintenance Expense (O&M Summary)

Based on the above adjustments, O&M expense should be decreased by $5,939, resulting in total O&M expense of $25,015. Staff's recommended adjustments to O&M expense are shown on Schedule Nos. 3-A and 3-B.

Depreciation Expense (Net of Amortization of CIAC)

No depreciation expense balances were available for 2014. Audit staff calculated depreciation expense using the prescribed rates set forth in Rule 25-30.140, F.A.C., and determined a test year depreciation expense of $1,727. Staff decreased this account by $103 to reflect retirement of certain pro forma items from the Utility's last SARC, as discussed in Issue 3, reducing the test year depreciation expense to $1,624. In addition, because the Utility's CIAC is fully amortized and there has been no CIAC activity since the Utility's last SARC, there is no amortization of CIAC expense. Therefore, staff recommends depreciation expense of $1,624.

Taxes Other Than Income (TOTI)

The Utility's Expense Summary reflects $3,280 in TOTI for the test year, although an official balance for 2014 was not yet available at the time of staff's audit. Staff increased this account by $90 to reflect the appropriate test year RAFs. Also, staff decreased this account by $1,747 to reflect the appropriate test year property taxes and remove license and permit renewal fees that are currently included in Account No. 675 – Miscellaneous Expense. Staff's net adjustment to test year TOTI is a decrease of $1,657. In addition, as discussed in Issue 7, revenues have been increased by $2,958 to reflect the change in revenue required to cover expenses and allow the

recommended rate of return. As a result, TOTI should be increased by $133 to reflect RAFs of 4.5 percent of the change in revenues. Therefore, staff recommends TOTI of $1,757.

Operating Expenses Summary

The application of staff's recommended adjustments to Alturas' test year operating expenses result in operating expenses of $28,395. Staff recommends that the Utility be required to file documentation in this docket by December 31, 2016, showing that the pro forma trihalomethane and haloacetic acid tests have been completed. The documentation should include a copy of the test results and final invoices.

Issue 8: What is the appropriate revenue requirement?

Recommendation: The appropriate revenue requirement is $31,101, resulting in an annual increase of $2,958 (10.51 percent). (Golden, Vogel)

Staff Analysis: Alturas should be allowed an annual increase of $2,958 (10.51 percent). This will allow the Utility the opportunity to recover its expenses and earn an 8.53 percent return on its investment. The calculations are as follows:

Table 8-1
Water Revenue Requirement

Adjusted Rate Base	$31,718
Rate of Return	x 8.53%
Return on Rate Base	$2,706
Adjusted O&M Expense	25,015
Depreciation Expense (Net)	1,624
Taxes Other Than Income	1,757
Income Taxes	0
Revenue Requirement	$31,101
Less Adjusted Test Year Revenues	28,143
Annual Increase	$2,958
Percent Increase	10.51%

Issue 9: What are the appropriate rate structure and rates for Alturas?

Recommendation: The recommended rate structure and monthly water rates are shown on Schedule No. 4. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice. (Bruce)

Staff Analysis: Alturas is located in Polk County within the SWFWMD. The Utility provides water service to approximately 51 residential customers and 10 general service customers. Approximately 5 percent of the residential customer bills during the test year had zero gallons, indicating a non-seasonal customer base. The average residential water demand is 5,455 gallons per month. Currently, the Utility's water rate structure consists of a monthly base facility charge (BFC) and uniform gallonage charge for all customers. In the Utility's last rate case, a BFC allocation of 30 percent was approved.

Staff performed an analysis of the Utility's billing data in order to evaluate the appropriate rate structure for the residential water customers. The goal of the evaluation was to select the rate design parameters that: (1) produce the recommended revenue requirement; (2) equitably distribute cost recovery among the utility's customers; (3) establish the appropriate non-discretionary usage threshold for restricting repression; and (4) implement, where appropriate, water conserving rate structures consistent with Commission practice.

Staff evaluated whether it was appropriate to change the design of the Utility's current rate structure. Based on staff's analysis, establishing a non-discretionary usage threshold for restricting repression results in a de minimis amount of repression to residential gallons for rate setting purposes. Therefore, staff recommends an across-the-board increase of 10.57 percent to the existing rates and no repression adjustment to water consumption. The 10.57 percent increase reflects the recommended revenue increase excluding miscellaneous revenue. Table 9-1, on the following page, contains staffs' recommended rates as an across-the-board increase to the existing rate structure and rates and two alternative rate structures, which include a block for non-discretionary usage.

Table 9-1
Staff's Recommended and Alternative Water Rate Structures and Rates

	RATES AT TIME OF FILING	STAFF RECOMMENDED ACROSS-THE-BOARD	ALTERNATIVE I (30% BFC)	ALTERNATIVE II (35% BFC)
Residential				
5/8" x 3/4" Meter Size	$11.28	$12.47	$12.67	$14.79
Charge per 1,000 gallons				
All Gallons	$5.09	$5.63		
0-5,000 gallons			$5.91	$5.49
Over 5,000 gallons			$6.27	$5.74
Typical Residential 5/8" x 3/4" Meter Bill Comparison				
3,000 Gallons	$26.55	$29.36	$30.40	$31.26
5,000 Gallons	$36.73	$40.62	$42.22	$42.24
10,000 Gallons	$62.18	$68.77	$73.57	$70.94

Source: Current tariff and staff's calculations

Summary

The recommended rate structures and monthly water rates are shown on Schedule No. 4. The utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice.

Issue 10: What is the appropriate amount by which rates should be reduced four years after the published effective date to reflect the removal of the amortized rate case expense as required by Section 367.0816, F.S.?

Recommendation: The water rates should be reduced as shown on Schedule No. 4, to remove rate case expense grossed-up for RAFs and amortized over a four-year period. The decrease in rates should become effective immediately following the expiration of the four-year rate case expense recovery period, pursuant to Section 367.0816, F.S. The Utility should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. If Alturas files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense. (Bruce, Golden, Vogel)

Staff Analysis: Section 367.0816, F.S., requires that the rates be reduced immediately following the expiration of the four-year period by the amount of the rate case expense previously included in the rates. The reduction will reflect the removal of revenues associated with the amortization of rate case expense, the associated return on working capital, and the gross-up for RAFs which is $561. Using the Utility's current revenues, expenses, and customer base, the reduction in revenues will result in the rate decrease shown on Schedule No. 4.

Alturas should be required to file revised tariff sheets no later than one month prior to the actual date of the required rate reduction. The Utility also should be required to file a proposed customer notice setting forth the lower rates and the reason for the reduction. If Alturas files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense.

Issue 11: What is the appropriate disposition of the overcollection of rate case expense approved by Order No. PSC-10-0380-PAA-WU for Alturas' water system?[19]

Recommendation: The Utility should be required to refund customers the amount of overcollected rate case expense. The refund should be made in accordance with Rule 25-30.360, F.A.C. The Utility should be required to file monthly reports on the status of the refund by the twentieth of the following month pursuant to Rule 25-30.311(7) F.A.C. (Burce)

Staff Analysis: As discussed previously, staff discovered that Alturas did not implement the four-year rate reduction that became effective on August 14, 2014, as a result of the staff audit. Staff verified that the Utility began billing the reduced rates in May 2015. The Utility has indicated it issued refunds to customers for the overcollection of rate case expense. On several occasions, staff requested the utility provide documentation of the refund, including the total amount issued. To date, the Utility has not provided the documentation. Staff estimates the amount of overcollection to be approximately $281.

Based on the above, staff recommends that the Utility should be required to refund customers the amount of overcollected rate case expense. The refund should be made in accordance with Rule 25-30.360, F.A.C. The Utility should be required to file monthly reports on the status of the refund by the twentieth of the following month pursuant to Rule 25-30.311(7) F.A.C.

[19]Order No. PSC-10-0380-PAA-WU, issued on June 15, 2010, in Docket No. 090477-WU, *In re: Application for staff-assisted rate case in Polk County by Alturas Utilities, L.L.C.*

Issue 12: What are the appropriate initial customer deposits for Alturas and in what manner should the utility's noncompliance with Rule 25-30.311, F.A.C. be addressed?

Recommendation: The appropriate initial customer deposits should be $86 for the residential 5/8 inch x 3/4 inch meter size for water. The initial customer deposits for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill for water. The approved customer deposits should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475, F.A.C. The Utility should be required to charge the approved charges until authorized to change them by the Commission in a subsequent proceeding.

Staff recommends that the Utility continue to work on its compliance with Rule 25-30.311 F.A.C. Alturas should be required to reconcile its customer deposit accounts and records within a reasonable time. The Utility should be required to provide monthly reports beginning March 31, 2016, until it has satisfactorily refunded the appropriate amount of customer deposits and applied the appropriate interest on customer deposits. Staff should be given administrative authority to determine when the Utility is in compliance with Rule 25-30.311, F.A.C. Staff recommends that enforcement action is not warranted at this time. (Bruce)

Staff Analysis: Rule 25-30.311, F.A.C., contains the criteria for collecting, administering, and refunding customer deposits. Customer deposits are designed to minimize the exposure of bad debt expense for the Utility and, ultimately, the general body of ratepayers. Historically, the Commission has set initial customer deposits equal to two times the average estimated bill.[20] Currently, the Utility's existing initial deposit for residential and general service customers is $65 for the 5/8 inch x 3/4 inch meter size. The initial customer deposits for all other general service meter sizes are two times the average estimated bill. Based on staff's recommended rates, the appropriate initial deposit for residential customers should be $86 for the 5/8 inch x 3/4 inch meter size to reflect a two month average customer bill and two times the average estimated bill for all other residential and general services meter sizes.

In response to staff's request for information, staff discovered that the Utility was in apparent violation of Rule 25-30.311, F.A.C. During staff's review of the Utility's customer records, staff noted that the Utility failed to properly record the amount of each deposit, failed to pay the appropriate amount of interest on customer deposits, and failed to refund residential customer deposits after 23 months of satisfactory payment. The Utility is currently working on correcting these issues. On February 15, 2016, the Utility provided a copy of its current Customer Deposit Report, which indicated that a few customers had received a credit for interest payments on their deposits. The Utility has indicated it will refund customer deposits by the end of February 2016 to those customers who are entitled to a refund. Staff recommends that the utility continue to work on its compliance with Rule 25-30.311, F.A.C. The Utility should be required to provide monthly reports until it has satisfactorily refunded the appropriate amount of customer deposits and applied the appropriate interest on customer deposits. Staff should be given administrative authority to determine when the Utility is in compliance with Rule 25-30.311, F.A.C. Staff

[20]Order No. PSC-13-0611-PAA-WS, issued on November 19, 2013, in Docket No. 130010-WS, *In re: Application for increase in water rates in Lee County and wastewater rates in Pasco County by Ni Florida, LLC.*, and Order No. PSC-14-0016-TRF-WU, issued on January 6, 2014, in Docket No. 130251-WU, *In re: Application for approval of miscellaneous service charges in Pasco County, by Crestridge Utility Corporation.*

believes the Utility is moving forward to make corrective actions to resolve the issues regarding the customer deposits. Therefore, staff recommends that enforcement action is not warranted at this time. However, staff believes Alturas should be put on notice that if the Utility does not resolve the customer deposit errors within a reasonable times and/or its deposit records are found to be out of compliance with Commission regulations in the future, the Utility may be subject to a show cause proceeding by the Commission, including penalties.

Based on the above, staff recommends the appropriate initial customer deposits should be $86 for the residential 5/8 inch x 3/4 inch meter size for water. The initial customer deposits for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill for water. The approved customer deposits should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475, F.A.C. The Utility should be required to charge the approved charges until authorized to change them by the Commission in a subsequent proceeding.

Staff recommends that the Utility continue to work on its compliance with Rule 25-30.311 F.A.C. Alturas should be required to reconcile its customer deposit accounts and records within a reasonable time. The Utility should be required to provide monthly reports beginning March 31, 2016, until it has satisfactorily refunded the appropriate amount of customer deposits and applied the appropriate interest on customer deposits. Staff should be given administrative authority to determine when the Utility is in compliance with Rule 25-30.311, F.A.C. Staff recommends that enforcement action is not warranted at this time.

Issue 13: Should the recommended rates be approved for Alturas on a temporary basis, subject to refund, in the event of a protest filed by a party other than the Utility?

Recommendation: Yes. Pursuant to Section 367.0814(7), F.S., the recommended rates should be approved for the Utility on a temporary basis, subject to refund, in the event of a protest filed by a party other than the Utility. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the temporary rates should not be implemented until staff has approved the proposed notice, and the notice has been received by the customers. Prior to implementation of any temporary rates, the Utility should provide appropriate security. If the recommended rates are approved on a temporary basis, the rates collected by the Utility should be subject to the refund provisions discussed below in the staff analysis. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(6), F.A.C., the Utility should file reports with the Commission Clerk's office no later than the twentieth of every month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed should also indicate the status of the security being used to guarantee repayment of any potential refund. (Golden, Vogel)

Staff Analysis: This recommendation proposes an increase in rates. A timely protest might delay what may be a justified rate increase resulting in an unrecoverable loss of revenue to the Utility. Therefore, pursuant to Section 367.0814(7), F.S., in the event of a protest filed by a party other than the Utility, staff recommends that the recommended rates be approved as temporary rates. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the temporary rates should not be implemented until staff has approved the proposed notice, and the notice has been received by the customers. The recommended rates collected by the Utility should be subject to the refund provisions discussed below.

The Utility should be authorized to collect the temporary rates upon staff's approval of an appropriate security for the potential refund and the proposed customer notice. Security should be in the form of a bond or letter of credit in the amount of $1,976. Alternatively, the Utility could establish an escrow agreement with an independent financial institution.

If the Utility chooses a bond as security, the bond should contain wording to the effect that it will be terminated only under the following conditions:

1. The Commission approves the rate increase; or,
2. If the Commission denies the increase, the Utility shall refund the amount collected that is attributable to the increase.

If the Utility chooses a letter of credit as a security, it should contain the following conditions:

1. The letter of credit is irrevocable for the period it is in effect.
2. The letter of credit will be in effect until a final Commission order is rendered, either approving or denying the rate increase.

If security is provided through an escrow agreement, the following conditions should be part of the agreement:

1. The Commission Clerk, or his or her designee, must be a signatory to the escrow agreement.
2. No monies in the escrow account may be withdrawn by the Utility without the prior written authorization of the Commission Clerk, or his or her designee.
3. The escrow account shall be an interest bearing account.
4. If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers.
5. If a refund to the customers is not required, the interest earned by the escrow account shall revert to the Utility.
6. All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times.
7. The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt.
8. This escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.
9. The account must specify by whom and on whose behalf such monies were paid.

In no instance should the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and should be borne by, the Utility. Irrespective of the form of security chosen by the Utility, an account of all monies received as a result of the rate increase should be maintained by the Utility. If a refund is ultimately required, it should be paid with interest calculated pursuant to Rule 25-30.360(4), F.A.C.

The Utility should maintain a record of the amount of the bond, and the amount of revenues that are subject to refund. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(6), F.A.C., the Utility should file reports with the Commission Clerk's office no later than the twentieth of every month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed should also indicate the status of the security being used to guarantee repayment of any potential refund.

Issue 14: Should Alturas be required to notify the Commission, in writing, that it has adjusted its books in accordance with the Commission's decision?

Recommendation: Yes. The Utility should be required to notify the Commission, in writing, that it has adjusted its books in accordance with the Commission's decision. Alturas should submit a letter within 90 days of the final order in this docket, confirming that the adjustments to all the applicable NARUC USOA primary accounts as shown on Schedule No. 5 have been made to the Utility's books and records. In the event the Utility needs additional time to complete the adjustments, notice should be provided within seven days prior to deadline. Upon providing good cause, staff should be given administrative authority to grant an extension of up to 60 days. In addition, the Utility should be required to maintain its books and records on a monthly basis in accordance with the NARUC USOA. (Golden, Vogel)

Staff Analysis: The Utility should be required to notify the Commission, in writing that it has adjusted its books in accordance with the Commission's decision. Schedule No. 5 reflects the accumulated plant, depreciation, CIAC, and amortization of CIAC balances as of December 31, 2014. Alturas should submit a letter within 90 days of the final order in this docket, confirming that the adjustments to all the applicable NARUC USOA primary accounts as shown on Schedule No. 5 have been made to the Utility's books and records. In the event the Utility needs additional time to complete the adjustments, notice should be provided within seven days prior to deadline. Upon providing good cause, staff should be given administrative authority to grant an extension of up to 60 days.

In addition, as discussed in Issues 4 and 7, Rule 25-30.115, F.A.C., requires that water and wastewater utilities maintain their accounts and records in conformity with the 1996 NARUC USOA. The Utility is not currently maintaining its books and records on a monthly basis as required. The lack of properly maintained books and records proved to be a significant impediment to the audit staff, substantially increasing the work required to process the audit for this docket, as well as the audit in the Sunrise SARC docket. The lack of properly maintained books and records also proved to be a significant impediment to technical staff's work on this docket as well. Further, staff believes the lack of frequent bookkeeping activities may hinder the Utility's ability to detect and respond to cash flow concerns on a more regular basis. Therefore, staff recommends that the Utility be required to maintain its books and records on a monthly basis in accordance with the NARUC USOA.

Due to the Utility's recent efforts to hire a contractual accountant to begin maintaining the books and records going forward, staff does not believe it is necessary to initiate a show cause proceeding at this time. However, staff believes the Utility should be put on notice that if the Utility's books and records are found to be out of compliance with Commission regulations in the future, the Utility may be subject to a show cause proceeding by the Commission including penalties.

Issue 15: Should this docket be closed?

Recommendation: No. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order will be issued. The docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the Utility and approved by staff, and the Utility has provided staff with proof that the adjustments for all the applicable NARUC USOA primary accounts have been made. Also, the docket should remain open to allow staff to verify that the Utility has adjusted its customer deposit records and all deposit amounts that may be owed to customers have been properly refunded and to verify the Utility has properly refunded the rate case expenses it over-collected. Once the above actions are completed this docket will be closed administratively. (Corbari)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order will be issued. The docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the Utility and approved by staff, and the Utility has provided staff with proof that the adjustments for all the applicable NARUC USOA primary accounts have been made. Also, the docket should remain open to allow staff to verify that the Utility has adjusted its customer deposit records and all deposit amounts that may be owed to customers have been properly refunded and to verify the Utility has properly refunded the rate case expenses it over-collected. Once the above actions are completed this docket will be closed administratively.

ALTURAS UTILITIES, L.L.C. **SCHEDULE NO. 1-A**
TEST YEAR ENDED 12/31/14 **DOCKET NO. 140219-WU**
SCHEDULE OF WATER RATE BASE

	DESCRIPTION	BALANCE PER UTILITY	STAFF ADJUST. TO UTIL. BAL.	BALANCE PER STAFF
1.	UTILITY PLANT IN SERVICE	$59,612	$5,316	$64,928
2.	LAND & LAND RIGHTS	500	0	500
3.	NON-USED AND USEFUL COMPONENTS	0	0	0
4.	CIAC	(18,637)	0	(18,637)
5.	ACCUMULATED DEPRECIATION	(34,230)	(2,607)	(36,837)
6.	AMORTIZATION OF CIAC	18,637	0	18,637
7.	WORKING CAPITAL ALLOWANCE	0	3,127	3,127
8.	WATER RATE BASE	$25,882	$5,836	$31,718

ALTURAS UTILITIES, L.L.C.
TEST YEAR ENDED 12/31/14
ADJUSTMENTS TO RATE BASE

SCHEDULE NO. 1-B
DOCKET NO. 140219-WU

	UTILITY PLANT IN SERVICE	
1.	To reflect appropriate amount of additions in 2010 and 2011 per audit.	$7,068
2.	To reflect retirements associated with 2010 and 2011 plant additions.	(1,752)
	Total	$5,316
	ACCUMULATED DEPRECIATION	
1.	To reflect accumulated depreciation per Rule 25-30.140, F.A.C.	($5,623)
2.	To reflect retirements associated with 2010 and 2011 plant additions.	2,204
3.	To reflect an averaging adjustment.	811
	Total	($2,607)
	WORKING CAPITAL ALLOWANCE	
	To reflect 1/8 of test year O&M expenses.	$3,127

ALTURAS UTILITIES, L.L.C.
TEST YEAR ENDED 12/31/14
SCHEDULE OF CAPITAL STRUCTURE

SCHEDULE NO. 2
DOCKET NO. 140219-WU

	CAPITAL COMPONENT	PER UTILITY	SPECIFIC ADJUST-MENTS	BALANCE BEFORE PRO RATA ADJUSTMENTS	PRO RATA ADJUST-MENTS	BALANCE PER STAFF	PERCENT OF TOTAL	COST	WEIGHTED COST
1.	COMMON STOCK	$0	$0	$0					
2.	RETAINED EARNINGS	0	0	0					
3.	PAID IN CAPITAL	0	0	0					
4.	OTHER COMMON EQUITY	0	45,000	45,000					
	TOTAL COMMON EQUITY	$0	$45,000	$45,000	($14,268)	$30,732	96.89%	8.74%	8.47%
5.	LONG TERM DEBT	$0	$0	$0	$0	$0	0.00%	0.00%	0.00%
6.	SHORT-TERM DEBT	0	0	0	0	0	0.00%	0.00%	0.00%
7.	PREFERRED STOCK	0	0	0	0	0	0.00%	0.00%	0.00%
	TOTAL DEBT	$0	$0	$0	$0	$0	0.00%		
8.	CUSTOMER DEPOSITS	$0	$986	$986	$0	$986	3.11%	2.00%	0.06%
9.	TOTAL	$0	$45,986	$45,986	($14,268)	$31,718	100.00%		8.53%

RANGE OF REASONABLENESS	LOW	HIGH
RETURN ON EQUITY	7.74%	9.74%
OVERALL RATE OF RETURN	7.56%	9.50%

ALTURAS UTILITIES, L.L.C.
TEST YEAR ENDED 12/31/14
SCHEDULE OF WATER OPERATING INCOME

SCHEDULE NO. 3-A
DOCKET NO. 140219-WU

		TEST YEAR PER UTILITY	STAFF ADJUSTMENTS	STAFF ADJUSTED TEST YEAR	ADJUST. FOR INCREASE	REVENUE REQUIREMENT
1.	**OPERATING REVENUES**	$28,177	($34)	$28,143	$2,958 10.51%	$31,101
	OPERATING EXPENSES:					
2.	OPERATION & MAINTENANCE	$30,954	($5,939)	$25,015	$0	$25,015
3.	DEPRECIATION (NET)	0	1,624	1,624	0	1,624
4.	TAXES OTHER THAN INCOME	3,280	(1,657)	1,623	133	1,757
5.	INCOME TAXES	0	0	0	0	0
6.	**TOTAL OPERATING EXPENSES**	$34,234	($5,972)	$28,262	$133	$28,395
7.	**OPERATING INCOME/(LOSS)**	($6,057)		($119)		$2,706
8.	**WATER RATE BASE**	$25,882		$31,718		$31,718
9.	**RATE OF RETURN**	(23.40%)		(0.38%)		8.53%

ALTURAS UTILITIES, L.L.C. TEST YEAR ENDED 12/31/14 ADJUSTMENTS TO OPERATING INCOME	SCHEDULE NO. 3-B DOCKET NO. 140219-WU Page 1 of 2
OPERATING REVENUES	
1. To reflect the appropriate test year revenues.	($184)
2. To reflect the appropriate test year miscellaneous service revenues.	150
Subtotal	($34)
OPERATION AND MAINTENANCE EXPENSES	
1. Salaries and Wages - Officers (603)	
a. To reflect appropriate allocation of administration officer/owner's salary.	$2,640
b. To reflect appropriate allocation of president's salary.	165
c. To reflect reduction in officers' salaries due to quality of service penalty.	(701)
	$2,104
2. Purchased Power (615)	
a. To reflect appropriate purchased power expense and removal of late fees..	($104)
b. To reflect 32% excessive unaccounted for water adjustment.	(460)
Subtotal	($564)
3. Chemicals (618)	
To reflect 32% excessive unaccounted for water adjustment	($247)
4. Contractual Services - Billing (630)	
To reflect pro forma contractual billing assistant expense.	($1,333)
5. Contractual Services - Professional (631)	
To reflect pro forma contractual bookkeeping expense.	$1,250
6. Contractual Services - Testing (635)	
a. To reflect appropriate annual testing expense.	$1,465
b. To reflect pro forma 3-year amortization of triennial water tests.	1,103
c. To reflect pro forma 5-year amortization of DEP-required additional tests.	380
Subtotal	$2,948
7. Contractual Services - Other (636)	
a. To reflect appropriate contractual office manager expense.	($3,680)
b. To reflect appropriate test year contractual operator expense.	(2,567)
c. To reflect appropriate test year maintenance expense.	(5,721)
d. To reclassify meter checking expense from Alturas to Sunrise.	(159)
e. To reflect pro forma contractual utility service technician expense.	2,860
Subtotal	($9,267)
8. Transportation Expense (650)	
To reflect pro forma transportation expense.	($1,035)
9. Insurance Expense (655)	
To reflect appropriate insurance expense.	$31

ALTURAS UTILITIES, L.L.C. | **SCHEDULE NO. 3-B**
TEST YEAR ENDED 12/31/14 | **DOCKET NO. 140219-WU**
ADJUSTMENTS TO OPERATING INCOME | **Page 2 of 2**

	OPERATION AND MAINTENANCE EXPENSES (CONTINUED)	
10.	Regulatory Commission Expense (665)	
	To reflect 4-year amortization of rate case expense ($2,119/4)	$530
11.	Bad Debt Expense (670)	
	To reflect appropriate bad debt expense.	($292)
12.	Miscellaneous Expense (675)	
	a. To reflect appropriate test year miscellaneous expense.	($260)
	b. To reflect 5-year amortization of non-recurring miscellaneous operator expense.	33
	c. To reflect pro forma annual FRWA membership dues.	163
	d. To reflect pro forma 5-year amort. of software update, additional license, and training.	30
	e. To reflect pro forma 5-year amortization of electronic bank deposit machine.	17
	Subtotal	($64)
	TOTAL OPERATION & MAINTENANCE ADJUSTMENTS	($5,939)
	DEPRECIATION EXPENSE	
	To reflect test year depreciation calculated per Rule 25-30.140, F.A.C.	$1,624
	TAXES OTHER THAN INCOME	
1.	To reflect appropriate test year RAFs.	$90
2.	To reflect appropriate test year utility property taxes.	(1,747)
	Total	($1,657)

ALTURAS UTILITIES, L.L.C. **SCHEDULE NO. 3-C**
TEST YEAR ENDED 12/31/14 **DOCKET NO. 140219-WU**
ANALYSIS OF WATER OPERATION AND MAINTENANCE EXPENSE

	TOTAL PER UTILITY	STAFF ADJUST-MENTS	TOTAL PER STAFF
(601) SALARIES AND WAGES - EMPLOYEES	$0	$0	$0
(603) SALARIES AND WAGES - OFFICERS	0	2,104	2,104
(604) EMPLOYEE PENSIONS AND BENEFITS	0	0	0
(610) PURCHASED WATER	0	0	0
(615) PURCHASED POWER	1,542	(564)	978
(616) FUEL FOR POWER PRODUCTION	0	0	0
(618) CHEMICALS	772	(247)	525
(620) MATERIALS AND SUPPLIES	0	0	0
(630) CONTRACTUAL SERVICES - BILLING	3,169	(1,333)	1,836
(631) CONTRACTUAL SERVICES - PROFESSIONAL	400	1,250	1,650
(635) CONTRACTUAL SERVICES - TESTING	0	2,948	2,948
(636) CONTRACTUAL SERVICES - OTHER	19,545	(9,267)	10,278
(640) RENTS	0	0	0
(650) TRANSPORTATION EXPENSE	1,233	(1,035)	198
(655) INSURANCE EXPENSE	1,576	31	1,607
(665) REGULATORY COMMISSION EXPENSE	0	530	530
(670) BAD DEBT EXPENSE	516	(292)	224
(675) MISCELLANEOUS EXPENSE	2,201	(64)	2,137
	$30,954	($5,939)	$25,015

ALTURAS UTILITIES, LLC. **SCHEDULE NO. 4**
TEST YEAR ENDED 12/31/14 **DOCKET NO. 140219-WU**
MONTHLY WATER RATES

	UTILITY CURRENT RATES	STAFF RECOMMENDED RATES	4 YEAR RATE REDUCTION
Residential and General Service			
Base Facility Charge by Meter Size			
5/8"X3/4"	$11.28	$12.47	$0.23
3/4"	$16.92	$18.71	$0.34
1"	$28.19	$31.18	$0.56
1-1/2"	$56.40	$62.35	$1.13
2"	$90.23	$99.76	$1.81
3"	$180.46	$199.52	$3.61
4"	$281.97	$311.75	$5.64
6"	$563.95	$623.50	$11.29
Charge per 1,000 gallons - Residential and General Service	$5.09	$5.63	$0.10
Typical Residential 5/8" x 3/4" Meter Bill Comparison			
3,000 Gallons	$26.55	$29.36	
5,000 Gallons	$36.73	$40.62	
10,000 Gallons	$62.18	$68.77	

ALTURAS UTILITIES, L.L.C. **SCHEDULE NO. 5**

TEST YEAR ENDED 12/31/2014 **DOCKET NO. 140219-WU**

SCHEDULE OF WATER PLANT, DEPRECIATION, CIAC, & CIAC AMORTIZATION BALANCES

ACCT NO.	DEPR. RATE PER RULE 25-30.140	DESCRIPTION	UPIS 12/31/2014 (DEBIT)	ACCUM. DEPR. 12/14/2014 (CREDIT)*
303	0.00%	LAND AND LAND RIGHTS (NON-DEPRECIABLE)	$500	$0
304	3.70%	STRUCTURES AND IMPROVEMENTS	519	67
307	3.70%	WELLS AND SPRINGS	6,987	6,987
309	3.13%	SUPPLY MAINS	237	33
311	5.88%	PUMPING EQUIPMENT	9,108	3,975
320	5.88%	WATER TREATMENT EQUIPMENT	220	220
330	3.03%	DISTRIBUTION RESERVOIRS AND STANDPIPES	22,822	7,294
331	2.63%	TRANSMISSION AND DISTRIBUTION MAINS	18,787	18,647
334	5.88%	METERS AND METER INSTALLATIONS	6,247	424
		TOTAL INCLUDING LAND	$65,427	$37,647

		CIAC AMORT. 12/31/2014 (DEBIT)	CIAC 12/31/2014 (CREDIT)
		$18,637	$18,637

*The accumulated depreciation balance excludes the staff-recommended averaging adjustment that is only used for ratesetting purposes and should not be reflected on the Utility's books.

Item 8

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 18, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (Lewis)
Division of Accounting and Finance (Golden, Vogel)
Division of Economics (Bruce)
Office of the General Counsel (Corbari)

RE: Docket No. 140220-WU – Application for staff-assisted rate case in Polk County by Sunrise Utilities, L.L.C.

AGENDA: 03/01/16 – Proposed Agency Action – Except for Issue Nos. 11, 13, and 14 - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: 05/06/2016 (15-Month Effective Date (SARC))

SPECIAL INSTRUCTIONS: Place item on Agenda immediately after Docket No. 140219-WU, *In re: Application for staff-assisted rate case in Polk County by Alturas Utilities, L.L.C.*

Table of Contents

Case Background

Sunrise Utilities, L.L.C., (Sunrise or Utility) is a Class C utility providing water service to approximately 247 residential water customers in Auburndale, Florida, located in Polk County. The Utility's service territory is located in the Southwest Florida Water Management District and is subject to a year-round irrigation rule. Sunrise's water treatment plant (WTP) was placed into service around 1970. The system was operated by Sunrise Water Company, Inc. and was issued a Grandfather certificate in 1997.[1] Sunrise Water Company was transferred to Keen Sales, Rentals and Utilities, Inc. in 1992.[2] Sunrise acquired a portion of Keen Sales, Rentals and Utilities, Inc.'s service territory in 2005 when it was granted a transfer.[3] According to Sunrise's 2014 Annual Report, total gross revenues were $69,411 and total operating expenses were $95,476 resulting in a net loss of $26,065.

On November 10, 2014, Sunrise filed its application for a staff assisted rate case (SARC), in accordance with a payment plan negotiated with staff for the payment of delinquent Regulatory Assessment Fees (RAFs) owed by the Utility. Staff selected the test year ending December 31, 2014, for the instant case. The Utility's last SARC before the Commission was approved in 2012.[4]

A customer meeting was held in Auburndale, Florida on May 20, 2015, to receive customer questions and comments concerning Sunrise's rate case and quality of service. On June 10, 2015, the Office of Public Counsel (OPC) filed comments identifying its concerns with information contained in the Staff Report.[5] On December 9, 2015, staff held a noticed, informal meeting with OPC to discuss the status of the Utility's SARC, including issues or concerns identified by staff, OPC or other interested party.[6]

The Commission has jurisdiction in this case pursuant to Section 367.0814, Florida Statutes, (F.S.).

[1]Order No. PSC-97-0832-FOF-WU, issued July 11, 1997, in Docket No. 961249-WU, *In re: Application for grandfather certificate to provide water service in Polk County by Sunrise Water Company, Inc.*
[2]Order No. Order PSC-00-1388-PAA-WU, issued July 31, 2000, in Docket No. 990731-WU, *In re: Application for transfer of water facilities from Sunrise Water Company, Inc., holder of Certificate No. 584-W, to Keen Sales. Rentals and Utilities, Inc., holder of Certificate No. 582-W, in Polk County, for cancellation of Certificate No. 584-W, and for amendment of Certificate No. 582-W to include additional territory.*
[3]Order No. PSC-05-0308-PAA-WU, issued March 20, 2005, in Docket No. 040159-WU, *In re: Application for transfer of portion of Certificate No. 582-W by Keen Sales, Rentals and Utilities, Inc. to Sunrise Utilities, LLC, in Polk County.*
[4]Order No. PSC-12-0533-PAA-WU, issued October 9, 2012, in Docket No. 110238 - WU, *In re: Application for staff-assisted rate case in Polk County by Sunrise Utilities, LLC.*
[5]Document No. 03572-15 filed on June 10, 2015, in Docket No. 140220-WU.
[6]Document No. 07808-15, filed on December 10, 2015, in Docket Nos. 140219-WU and 140220-WU.

Discussion of Issues

Issue 1: Should the quality of service provided by Sunrise be considered satisfactory?

Recommendation: No. The overall quality of service provided by Sunrise should be considered unsatisfactory because the Utility has failed to address maintenance and repairs recommended by the Polk County Health Department (PCHD) in 2012. Furthermore, the Utility has demonstrated a pattern of non-responsiveness to Commission inquiries. As such, staff recommends decreasing the officers' salaries by 25 percent. (Lewis)

Staff Analysis: Pursuant to Rule 25-30.433(1), F.A.C., in water and wastewater rate cases, the Commission shall determine the overall quality of service provided by the Utility. This is derived from an evaluation of three separate components of the Utility operations. These components are; (1) the quality of the Utility's product, (2) the operating conditions of the Utility's plant and facilities, and (3) the Utility's attempt to address customer satisfaction. The Rule further states that sanitary surveys, outstanding citations, violations, and consent orders on file with the Department of Environmental Protection (DEP) and the county health department over the preceding three-year period shall be considered. Additionally, Section 367.0812(1)(c), F.S., requires the Commission to consider the extent to which the utility provides water service that meets secondary water quality standards as established by the DEP.

Quality of Utility's Product

Staff's evaluation of Sunrise's product quality consisted of a review of the Utility's compliance with the DEP primary and secondary drinking water standards, county health department standards, and customer complaints. Primary standards protect public health while secondary standards regulate contaminants that may impact the taste, odor, and color of drinking water.

Based on staff's review of the DEP and the PCHD records, Sunrise was in compliance with all primary and secondary standards in 2012 and 2013. On May 21, 2014, the PCHD conducted a Sanitary Survey and four deficiencies were noted. Sunrise corrected the four deficiencies identified by the PCHD within 30 days. Staff's review of monthly microbiological laboratory reports indicates no compliance issues during the remainder of 2014.

On June 9, 2015, the PCHD conducted a sanitary survey and found that the chlorination was insufficient. Follow up inspections on July 9, 2015, and July 17, 2015, showed that the chlorination issue had not been resolved. On July 21, 2015, the PCHD issued a warning notice against both Sunrise and its sister company, Alturas Utilities L.L.C., for not properly maintaining chlorine residuals. Sunrise's triennial test, for both primary and secondary standards, completed on December 15, 2015, indicated that the Utility was in compliance with the DEP and the PCHD standards. Therefore, it appears the Utility has corrected the chlorination issues and is now in compliance with the DEP and the PCHD primary and secondary standards.

Staff's review of complaints filed by customers did not reveal any issues or concerns regarding the quality of Sunrise's product. At the customer meeting held by staff, three customers stated the water quality was bad at times and not suitable for consumption. Based on staff's review, giving consideration to the Utility's current compliance with the DEP and the PCHD standards,

as well as the relatively low number of customer complaints, the quality of Sunrise's product should be considered satisfactory.

Operating Condition of the Utility's Plant and Facilities

Sunrise's water system provides finished water that is obtained from two wells. Sunrise's water system is served by an 8-inch diameter well rated 400 gallons per minute (gpm) and a 4-inch diameter well rated at 150 gpm. The raw water is injected with liquid chlorine prior to entering either a 6,000 gallon or 3,000 gallon hydropneumatic tank. The treated water is then pumped into the water distribution system.

Staff's evaluation of Sunrise's facilities included a review of the Utility's compliance with the DEP and the PCHD standards of operation.[7] On December 13, 2012, the PCHD conducted a plant inspection which concluded that the 6,000 gallon hydropneumatic tank would have to be cleaned and recoated within 36 months of the inspection date (December 2015). On January 14, 2016, the Utility and the PCHD entered into a Consent Order stating that the Utility failed to perform the recommended maintenance and that the Utility faced escalating financial penalties until the recommended maintenance was completed. Despite multiple requests, staff has not received any documentation from the Utility indicating that it is planning on performing the maintenance recommended by the PCHD. Based on the Utility's non-compliance and non-responsiveness to the PCHD requirements, staff believes that the operating condition of the Utility's plant and facilities should be considered unsatisfactory.

The Utility's Attempt to Address Customer Satisfaction

The final component of the overall quality of service which must be assessed is customer satisfaction. As part of staff's evaluation of customer satisfaction staff held a customer meeting (May 20, 2015) to receive customer comments concerning Sunrise's quality of service. Approximately 20 customers attended the meeting in which 5 spoke about their problems with the service provided by the Utility. The primary concern expressed by the five speakers dealt with billing issues. The customers were angered by multiple instances of their monthly payments not being credited properly resulting in late payment fees. In addition, they stated the Utility had a policy of knocking on the customers doors in the evening hours threatening to disconnect the service if a cash payment was not made to them immediately. In some instances, customers claim that they paid in cash as requested, and then received a double bill the following month with neither of their payments credited, although their bank or payment agent verified the payment. The customers characterized the Utility's practice of collecting payments as intimidating. In addition, a petition, with 71 signatories, objecting to the rate increase was given to staff at the customer meeting. The petition, however, lacked sufficient information (addresses) to quantify how many of the signatories were customers of the Utility.

Staff also requested the complaint records filed against the Utility, directly with the DEP/PCHD from 2011 through 2015. The DEP/PCHD responded that it had not received any complaints against the Utility during the specified time frame. The same request was sent to Sunrise, which responded that it did not have any customer complaints outside of the ones forwarded by the Commission's Office of Consumer Assistance and Outreach for the requested period. The review

[7]Staff conducted a plant site visit on May 19, 2015.

of the Commission's complaint records indicated 22 complaints against the Utility were received from January 1, 2011, through December 31, 2015. Similar to the concerns expressed at the customer meeting, many of the complaints reflected dissatisfaction with billing issues. Fourteen of the Utility's 22 responses, to staff inquiries, were beyond the 15 days required by Rule 25-22.032, (6)(b) F.A.C. Because the Utility's responses were late, they were recorded as apparent violations of the aforementioned Rule. OPC also raised concerns about the Utility's responsiveness to customer and staff inquiries. Table 1-1 below, summarizes the customer complaints gathered by staff in this docket.

Table 1-1

Subject of Complaint	PSC's Records (CATS)	Customer Meeting
Billing Related	14	4
Opposing Rate Increase	-	1
Other	2	-
Quality of Service	6	3
Total*	**22**	**8**

*A complaint may appear twice in this table if it meets multiple categories.

On October 19, 2015, the Utility notified staff that its daily customer service and repair operations were under new management. Additionally, the Utility has entered a contractual arrangement with a bookkeeper in Bartow, Florida, which would allow customers to make service requests and bill payments in person from 8:30 am to 5:00 pm Monday through Friday.[8] Although the Utility has demonstrated a willingness to address customer satisfaction, staff notes that complaints regarding billing have been occurring for several years now.

Staff believes that the Utility's untimely responses to the Commission as well as other regulatory agencies, relates to its attempts to address customer satisfaction. As discussed in this issue, Sunrise has not been responsive to the PCHD with respect necessary maintenance of it facilities, and the Utility has not been timely in its responses to the Commission's Office of Consumer Assistance and Outreach. Based on the summation of these concerns, as well as the customer's complaints regarding the Utility's practice of collecting payments, staff believes Sunrise's attempt to address customer satisfaction is unsatisfactory. If Sunrise continues to show a pattern of non-responsiveness to Commission inquiries or customers continue to complain about the Utility's practice of collecting payments, staff believes the initiation of a show-cause proceeding may be a reasonable action for the Commission to take.

Conclusion

The overall quality of service provided by Sunrise should be considered unsatisfactory because the Utility has failed to address maintenance and repairs recommended by the PCHD in 2012. Furthermore, the Utility has demonstrated a pattern of non-responsiveness to Commission inquiries. As such, staff recommends decreasing the officers' salaries by 25 percent.

[8]Document 06695-15, filed on October 20, 2015, in Docket No. 140219-WU.

Issue 2: What is the used and useful percentage (U&U) of Sunrise's water treatment plant and distribution system?

Recommendation: Staff recommends Sunrise's water treatment plant and its distribution system should both be considered 100 percent U&U. Additionally, staff recommends a 9.3 percent adjustment for excessive unaccounted for water (EUW) should be made to operating expenses for chemicals and purchased power. (Lewis)

Staff Analysis: Sunrise's water system is served by an 8-inch diameter well rated at 400 gallons per minute (gpm) and a 4-inch diameter well rated at 150 gallons per minute (gpm). The raw water is injected with liquid chlorine prior to entering either a 6,000 gallon or 3,000 gallon hydropneumatic tanks, and then pumped into the water distribution system. The Utility is permitted to withdraw an average of 58,400 gallons per day (gpd) up to 73,000 gpd peak. The treated water is then pumped into the water distribution system. According to the Utility, there are no fire hydrants and there was no growth in the service area during the last five years. During the previous SARC, both the water treatment plant and distribution system were deemed 100 percent U&U.

Water Treatment Plant and Distribution System Used &Useful

As noted above, the Commission found both the water treatment plant and distribution system to be 100 percent U&U in the prior SARC. There have been no major plant additions or growth in the last five years. Therefore, consistent with the prior Commission decision, the water treatment plant and distribution system should be considered 100 percent U&U.

Excessive Unaccounted for Water

Rule 25-30.4325, F.A.C., describes EUW as unaccounted for water in excess of 10 percent of the amount produced. When establishing the Rule, the Commission recognized that some uses of water are readily measurable and others are not. Unaccounted for water is all water that is produced that is not sold, metered, or accounted for in the records of the Utility. The Rule provides that to determine whether adjustments to plant and operating expenses, such as purchased electrical power and chemicals cost, are necessary, the Commission will consider all relevant factors as to the reason for EUW, solutions implemented to correct the problem, or whether a proposed solution is economically feasible. The unaccounted for water is calculated by subtracting both the gallons used for other purposes, such as flushing, and the gallons sold to customers from the total gallons pumped for the test year.

The Utility treated 17,560,851 gallons and sold 14,161,000 gallons of water during the test year. Sunrise did not record any gallons used for other purposes. Therefore, the amount of unaccounted water (17,560,851 – 14,161,000) equals 3,399,851 gallons. Ten percent of the gallons produced, (17,560,851 x 0.10) or 1,756,085 gallons, are allowed per Rule; therefore, the EUW (3,399,851 – 1,756,085) equals 1,643,766 gallons. This divided by the total gallons produced (1,643,766/17,560,851) equates to 9.3 percent EUW. Therefore, staff is recommending a 9.3 percent adjustment be made to operating expenses for chemicals and purchased power due to the EUW.

Conclusion

Staff recommends Sunrise's water treatment plant and its distribution system should both be considered 100 percent U&U. Additionally, staff recommends a 9.3 percent adjustment for EUW should be made to operating expenses for chemicals and purchased power.

Issue 3: What is the appropriate allocation of common costs to Sunrise?

Recommendation: The appropriate allocation of common costs to Sunrise is 78 percent. (Golden, Vogel)

Staff Analysis: Sunrise and its sister company, Alturas Utilities, L.L.C. (Alturas), receive services from several shared contractual service providers. During the test year, the Utility's allocation of the common costs varied for each of the contractual service providers. In its June 10, 2015, letter OPC expressed concern about the variability in the Utility's test year contractual service expense allocations. Commission practice is to allocate shared administrative and general expenses based on the number of ERCs.[9] In addition, the Commission previously approved this methodology for Sunrise and Alturas when the systems were owned by Keen Sales, Rentals, and Utilities, Inc. The appropriate allocation percentages are calculated as follows:

Table 3-1
Allocation Percentages

Name of System	Number of ERCs	Percentage of Allocation
Alturas Utilities, L.L.C.	69	22%
Sunrise Utilities, L.L.C.	247	78%
Total	316	100%

As shown above, Sunrise represents 78 percent of the ERCs for both utilities. Therefore, staff recommends that shared reasonable and prudent common expenses should be allocated to the Sunrise water system based on the allocated portion of 78 percent. This equitably reflects the distribution of costs between the two systems.

[9]Order Nos. 17043, issued December 31, 1986, in Docket No. 860325-WS, *In re: Request by Southern States Utilities, Inc. for approval of test year ended 12/31/85 for rate increase in Seminole County*; Order No. PSC-01-0323-PAA-WU, issued February 5, 2001, in Docket No. 000580-WU, *In re: Application for staff-assisted rate case in Polk County by Keen Sales, Rentals and Utilities, Inc. (Alturas Water Works)*; Order No. PSC-05-0442-PAA-WU, issued April 25, 2005, in Docket No. 040254-WU, *In re: Application for staff-assisted rate increase in Polk County by Keen Sales, Rentals and Utilities, Inc.*; Order No. PSC-09-0716-PAA-WU, issued October 28, 2009, in Docket No. 090072-WU, *In re: Application for staff-assisted rate case in Polk County by Keen Sales, Rentals and Utilities, Inc.*; Order No. PSC-13-0320-PAA-WU, issued July 12, 2013, in Docket No. 120269-WU, *In re: Application for staff-assisted rate case in Polk County by Pinecrest Utilities, LLC*; and Order No. PSC-13-0327-PAA-SU, issued July 16, 2013, in Docket No. 120270-SU, *In re: Application for staff-assisted rate case in Polk County by West Lakeland Wastewater, LLC.*

Issue 4: What is the appropriate average test year rate base for Sunrise?

Recommendation: The appropriate average test year rate base for Sunrise is $49,773. Staff recommends that the Utility be required to file written documentation in this docket showing that Sunrise owns or has the right to continued long-term use of the land upon which its treatment facilities are located by December 31, 2016. Also, in the event the Utility is unable to issue customer deposit refunds and interest payments to former customers, staff recommends that the resulting total of the unclaimed refunds and associated accrued interest be credited to contributions-in-aid-of-construction in the Utility's next rate proceeding. (Golden, Vogel)

Staff Analysis: The appropriate components of the Utility's rate base include utility plant in service, land, contributions-in-aid-of-construction (CIAC), accumulated depreciation, amortization of CIAC, and working capital. Sunrise's rate base was last established by Order No. PSC-12-0533-PAA-WU in a 2011 SARC.[10] Staff selected the test year ended December 31, 2014, for the instant case. A summary of each component of rate base and the recommended adjustments are discussed below.

Pursuant to Rule 25-30.115, F.A.C., water and wastewater utilities are required to maintain their accounts and records in conformity with the 1996 National Association of Regulatory Utility Commissioners' Uniform System of Accounts (NARUC USOA). As will be discussed further in Issues 7 and 14, the Utility is not currently maintaining its books and records on a monthly basis as prescribed by the NARUC USOA. Commission audit staff determined that the Utility's accounting activities are compiled at the end of each calendar year by the Utility's officers and their Certified Public Accounting (CPA) firm to prepare the Utility's Annual Report and its Federal Tax Return. Consequently, a 2014 income statement and balance sheet were not available, and the 2014 Annual Report was not compiled before the end of the audit staff's field work. Audit staff used the Utility's 2009 through 2013 Annual Reports, 2013 Federal Tax Return, and other supporting documents to compile the Utility's rate base, capital structure, and net operating income for the test year ended December 31, 2014.

Utility Plant in Service (UPIS)

As discussed above, no rate base balances were available for 2014. Using the Utility's 2009 through 2013 Annual Reports, audit staff calculated a test year UPIS balance of $124,367. In the Utility's last SARC, with a test year ended September 30, 2011, the Commission approved and included $6,755 of pro forma plant additions, without retirements. The projects included replacing the following plant items: a fence, a master flow meter, a well cover, isolation valves, and piping between the well and tank. On November 23, 2013, the Utility filed documents with the Commission that supported an actual cost of $1,733 for the approved projects to replace the fence, master flow meter, and well cover that were completed during 2012 and 2013. The Utility did not complete the two projects to replace the isolation valves and tank piping. The uncompleted projects accounted for $5,113 of the $6,755 pro forma plant additions approved. Commission staff reviewed and approved the Utility's filed documents and administratively closed the docket in that proceeding.

[10]Order No. PSC-12-0533-PAA-WU, issued October 9, 2012, in Docket No. 110238-WU, In *Re: Application for staff-assisted rate case in Polk County by Sunrise Utilities, LLC.*

A review of the Utility's Annual Reports indicates that the Utility has experienced a net operating loss immediately prior to and during each year since the pro forma projects were completed. Specifically, the Utility reported net operating losses of $9,544, $7,830, and $4,630 for 2011, 2012, and 2013, respectively. In addition, audit staff calculated a loss of $5,688 for 2014. The ongoing level of operating losses indicates that the $5,113 overstatement of UPIS was offset by other costs, and therefore, did not cause the Utility to exceed its authorized rate of return. In addition, due to a billing error, the Utility did not begin charging the Phase II rates when initially approved, thereby, minimizing the impact of the pro forma overstatement. However, staff believes it would be appropriate to adjust the rate base prospectively to correctly reflect the pro forma that was completed. Audit staff determined the Utility's UPIS should be decreased by $13,767 to remove the uncompleted pro forma projects, to remove unsupported plant additions, and to reclassify meter replacement costs that were covered as an expense item under a meter replacement program approved in the Utility's last SARC. Based on audit staff's review, staff has decreased UPIS by $13,767 to reflect the correct test year UPIS balance.

Audit staff noted the previously approved pro forma projects did not include any plant retirements. The three completed pro forma projects each involve the replacement of existing plant, and therefore, should include associated retirements. It is Commission practice to use 75 percent of the cost of the replacement as the retirement value when the original cost or original in-service date is not known. Accordingly, staff has decreased this account by $1,300 ($1,733 x .75 = $1,300) to reflect the plant retirements associated with the 2012 and 2013 pro forma projects to replace the fence, master flow meter, and well cover. No plant additions were made during the test year, therefore, no averaging adjustment is necessary.

Based on the adjustments shown above, staff's total adjustment to UPIS is a decrease of $15,067 ($13,767 + $1,300). Staff recommends a UPIS balance of $109,300.

Land and Land Rights

No land balance was available for 2014. The Commission previously approved a land balance of $553 in the Utility's 2011 SARC. Audit staff determined that there has been no activity related to land since the last case, and therefore, no adjustments are necessary to the previously approved land value. Therefore, staff increased this account by $553 to reflect the previously approved land balance.

However, audit staff determined that there is an error in the warranty deed that must corrected in order for the Sunrise to be in compliance with Commission regulations. On February 10, 2004, the Utility's former owner, Keen Sales, Rentals and Utilities, Inc., executed a warranty deed that transferred the real properties containing the Sunrise and Alturas systems to Sunrise. Subsequently, on November 8, 2004, the same former owner executed a corrective warranty deed that incorrectly transferred both real properties back to Alturas, rather than only transferring the Alturas land. Based on audit staff's review, the land occupied by the Sunrise water plant is still owned by Alturas.

Pursuant to Rule 25-30.433(10), F.A.C., utilities are required to own the land upon which the utility treatment facilities are located, or possess the right to the continued use of the land, such as a 99-year lease. The Rule specifies that the Commission may consider a written easement or other cost-effective alternative. The Utility owner indicated that he had contacted the Utility's

legal counsel regarding this issue, however, as of the writing of this recommendation, the land ownership issue has not be corrected. Therefore, staff recommends that the Utility be required to provide written documentation showing that Sunrise owns the land upon which its treatment facilities are located no later than six months after the issuance of an order finalizing this docket. Acceptable forms of documentation include a copy of the corrected warranty deeds for both Sunrise and Alturas, an executed long-term lease, or written easement. In addition, the Utility should be put on notice that failure to correct Sunrise's land ownership may result in the initiation of show cause proceedings, including penalties and fines.

Staff's total adjustment to this account is an increase of $553. Therefore, staff recommends a land and land rights balance of $553 for ratesetting purposes.

Non-Used and Useful Plant

As discussed in Issue 2, Sunrise's water treatment plant and distribution system are considered 100 percent U&U. Therefore, no U&U adjustment is necessary.

Contribution in Aid of Construction (CIAC)

No CIAC balance was available for the 2014 test year. The Commission approved a CIAC balance of $12,393 in the Utility's 2011 SARC. However, a review of the Utility's 2011, 2012, and 2013 Annual Reports indicates that the Utility never adjusted its previous CIAC balance of $5,168 to reflect the Commission approved balance. Therefore, staff increased this account by $7,225 ($12,393 - $5,168 = $7,225) to reflect the Commission approved balance. Audit staff determined there has been no activity related to CIAC since that case, therefore, no additional adjustments are necessary. Staff recommends a CIAC balance of $12,393.

In addition, as will be discussed later in this recommendation, Sunrise appears to be in violation of the Commission's rules and regulations regarding customer deposits. The Utility is working with Commission staff to correct the apparent violations, however, the final results of those corrections are not yet known. In the event the Utility is unable to issue customer deposit refunds and interest payments to former customers, staff recommends that the resulting total of the unclaimed refunds and associated accrued interest should be credited to CIAC in the Utility's next rate proceeding.

Accumulated Depreciation

Audit staff calculated a test year accumulated depreciation balance of $68,952. A review of the Utility's 2011, 2012, and 2013 Annual Reports indicates that the Utility never adjusted its records to reflect the accumulated depreciation balance approved by the Commission in the 2011 SARC. Further, audit staff determined the depreciation accruals had been recorded inconsistently since 2011. Therefore, audit staff calculated the annual accruals to accumulated depreciation beginning with the Utility's last SARC in 2011 through the end of the test year, using the prescribed rates set forth in Rule 25-30.140, F.A.C., and determined that accumulated depreciation should be increased by $3,131 to reflect the correct test year balance. In addition, staff decreased this account by a total of $1,412 to reflect retirement of the replaced fence, master flow meter, and well cover discussed above. Staff's retirement adjustment includes removal of $1,300 in accumulated depreciation for the retired fence, master flow meter, and well cover, as well as removal of $112 in additional accumulated depreciation that continued to accrue during the years following the plant replacements ($1,300 + $112 = $1,412). Also, staff

decreased this account by $2,254 to reflect an averaging adjustment. Staff's net adjustment to accumulated depreciation is a decrease of $535, resulting in an accumulated depreciation balance of $68,417.

Accumulated Amortization of CIAC

The Commission approved an accumulated amortization of CIAC balance of $10,395 in the Utility's 2011 SARC, however, the Utility's records were never adjusted to reflect that balance. Audit staff calculated CIAC amortization using the amortization rates established by Rule 25-30.140(9)(c), F.A.C., as of December 31, 2014, and determined that this account should be increased $6,900 to reflect the appropriate test year balance. However, audit staff also noted the Utility's CIAC would be fully amortized by August 2015. Because the CIAC is now fully amortized, staff believes it would be appropriate to make a pro forma adjustment to reflect the full amortization of the CIAC in August 2015. Therefore, staff increased this account by $325 to reflect the full amortization of CIAC. Due to the recognition of the full amortization of CIAC in this proceeding, no averaging adjustment is necessary. Staff's total adjustment to accumulated amortization of CIAC is an increase of $7,225 ($6,900 + $325). Therefore, staff recommends an accumulated amortization of CIAC balance of $12,393.

Working Capital Allowance

Working capital is defined as the investor-supplied funds that are necessary to meet operating expenses of the Utility. Consistent with Rule 25-30.433(2), F.A.C., staff used the one-eighth of the operation and maintenance (O&M) expense formula approach for calculating the working capital allowance. Applying this formula, staff recommends a working capital allowance of $8,337 (based on O&M expense of $66,697/8).

Rate Base Summary

Based on the foregoing, staff recommends that the appropriate average test year rate base is $49,773. Rate base is shown on Schedule No. 1-A. The related adjustments are shown on Schedule No. 1-B. Staff recommends that the Utility be required to file written documentation in this docket showing that Sunrise either owns or has continued long-term use of the land upon which its treatment facilities are located by December 31, 2016. Also, in the event the Utility is unable to issue customer deposit refunds and interest payments to former customers, staff recommends that the resulting total of the unclaimed refunds and associated accrued interest be credited to CIAC in the Utility's next rate proceeding.

Issue 5: What are the appropriate return on equity and overall rate of return for Sunrise?

Recommendation: The appropriate return on equity (ROE) is 8.74 percent with a range of 7.74 percent to 9.74 percent. The appropriate overall rate of return is 8.13 percent. (Golden, Vogel)

Staff Analysis: No capital structure balance was available for 2014. Based on a review of the Utility's Annual Reports, audit staff initially determined the Utility's capital structure is composed entirely of owners' equity because no debt or customer deposits were disclosed. However, audit staff could not determine the Utility's equity balance from its 2013 Annual Report or 2013 Federal Tax Return. Pursuant to Order No. PSC-05-0308-PAA-WU, which approved the transfer of Sunrise to the current owner, the purchase price was $90,000 for the system.[11] The purchase price was paid with cash in several installments. Therefore, staff has increased common equity by $90,000 to reflect the owner's equity in the system. In addition, Alturas subsequently provided customer deposit records that indicated the Utility was holding $4,480 in customer deposits during the test year. Accordingly, staff increased customer deposits by $4,480 to reflect the Utility's customer deposit balance as of December 31, 2014.

The Utility's capital structure has been reconciled with staff's recommended rate base. The appropriate ROE is 8.74 percent based upon the Commission-approved leverage formula currently in effect.[12] Staff recommends an ROE of 8.74 percent, with a range of 7.74 percent to 9.74 percent, and an overall rate of return of 8.13 percent. The ROE and overall rate of return are shown on Schedule No. 2.

[11]Order No. PSC-05-0308-PAA-WU, issued March 21, 2005, in Docket No. 040159-WU, *In re: Application for transfer of portion of Certificate No. 582-W by Keen Sales, Rentals, and Utilities, Inc. to Sunrise Utilities, L.L.C., in Polk County*.
[12]Order No. PSC-15-0259-PAA-WS, issued July 2, 2015, in Docket No. 150006-WS, *In re: Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.*

Issue 6: What are the appropriate test year revenues for Sunrise's water system?

Recommendation: The appropriate test year revenues for Sunrise's water system are $74,938. (Bruce)

Staff Analysis: At the time of staff's audit, the Utility had not closed its books for calendar year 2014, which is the test year in this docket. As a result, staff's adjustments are to the Utility's estimated test year revenues. Sunrise estimated test year revenues of $69,416, excluding any miscellaneous revenues. The Utility recorded five months of miscellaneous revenues during the test year, which totaled $1,320. Because no records were provided for the remaining seven months of the test year, staff estimated that a similar number of miscellaneous service events would occur throughout the remaining months and determined that additional miscellaneous revenues of $1,320 should be added. Therefore, test year revenues should be increased by $2,640. As discussed in Issue 7, the Utility has taken steps to properly record miscellaneous revenues. During the test year, the Utility had a Phase II rate increase that became effective on July 1, 2014. Staff has verified that the rates were implemented in May 2015. Based on the appropriate test year billing determinants and the annualized increased rates, service revenues should be increased by $2,882 to reflect service revenue of $72,298. Staff recommends that the appropriate test year revenues for Sunrise's water system are $74,938 ($72,298 + $2,640).

Issue 7: What is the appropriate amount of operating expenses?

Recommendation: The appropriate amount of operating expenses for the Utility is $75,778. Staff recommends that the Utility be required to file documentation in this docket by December 31, 2016, showing that the pro forma trihalomethane and haloacetic acid tests have been completed. The documentation should include a copy of the test results and final invoices. (Golden, Vogel)

Staff Analysis: As discussed in Issue 4, the Utility had not yet prepared its accounting records for 2014 at the time of staff's audit. Instead, the Utility provided audit staff with an Expense Summary schedule of actual and estimated expenses of $84,912, some invoices, and some cancelled checks. The Utility's sister company, Alturas, has also filed an application for a SARC that is being processed concurrently under Docket No. 140219-WU. Audit staff noted the majority of information used to verify Sunrise's test year expenses involved shared operator services between the two Utilities or comingled banking operations due to severe cash flow problems. Based on a review of the available information for both Sunrise and Alturas, audit staff initially determined Sunrise's test year operating expenses to be $75,104 for the test year ended December 31, 2014.

Subsequent to the audit, the Utility made several changes in its contractual service providers. The Utility also changed some procedures to improve the operation of the Utility and address some concerns discussed in staff's audit report and raised by customers. In response to several staff data requests, the Utility also provided additional documentation to support some previously unsupported expenses, some requested pro forma expenses, and some new pro forma expenses related to the Utility's efforts to improve its operations. Based on both the test year and supplemental information, staff made several adjustments to the Utility's operating expenses, as summarized below. In addition, staff made several adjustments in response to concerns raised by OPC in its June 10, 2015, letter filed in this docket and at a December 9, 2015, noticed informal meeting.

Operation and Maintenance (O&M) Expenses

Salaries and Wages – Officers (603)

The Utility's Expense Summary reflects $12,000 in this account. The Utility currently has two officers; an administration officer and a president. The administration officer is the Utility owner and serves as the primary officer responsible for overseeing the daily operations of the Utility. In the Utility's last SARC, the Commission approved an annual officer's salary of $12,000 for the owner.[13] At that time, the owner's duties included interfacing with the Utility's contractual manager on the day-to-day operations, reviewing the monthly meter reading reports, reviewing monthly bank statements, preparing the annual report, and compiling financial data for the certified public accountant (CPA) to prepare the federal income tax return. Currently, the owner works with the Utility's four contractual service providers to oversee the financial and operational functions of Sunrise and Alturas.

[13]Order No. PSC-12-0533-PAA-WU, issued on October 9, 2012, in Docket No. 110238-WU, *In re: Application for staff-assisted rate case in Polk County by Sunrise Utilities, LLC.*

As discussed in Issue 3, staff recommends that common costs be allocated between Sunrise and Alturas based on ERCs, with 78 percent allocated to Sunrise and the remaining 22 percent allocated to Alturas. Staff determined that the appropriate allocation of the administration officer/owner's salary to Sunrise is $9,360 ($12,000 x .78 = $9,360). Accordingly, staff decreased this account by $2,640 to allocate the remaining 22 percent of the $12,000 salary to Alturas ($12,000 x .22 = $2,640).

During the test year, the Utility also paid $750 to the Utility's president who assists the owner with utility matters as needed, including annual work related to preparation of the annual report and income tax forms. Staff increased this account by $585 to reflect the appropriate 78 percent allocation of the president's salary to Sunrise ($750 x .78 = $585).

In its June 10, 2015, letter OPC suggested that the administration officer/owner's salary should be re-evaluated due to the severe accounting record deficiencies and the owner's lack of response to several warning letters from the PCHD. As discussed in Issue 1, staff recommends that a 25 percent penalty be applied to the officers' salaries for unsatisfactory quality of service. The penalty was applied to the administration officer/owner's adjusted salary of $9,360, resulting in a $2,340 penalty decrease. The penalty was also applied to the president's salary of $585, resulting in a $146 decrease. Therefore, staff decreased this account by a total of $2,486 to reflect a 25 percent reduction in both officers' salaries allocated to Sunrise. The resulting officers' salaries allocated to Sunrise following the penalty reduction are $7,020 for the administration officer/owner and $439 for the president. As additional information, the total combined salaries for Sunrise and Alturas following all of staff's adjustments are $9,000 for the administration officer/owner and $563 for the president.

In summary, staff's total adjustment to this account is a decrease of $4,541. Staff recommends salaries and wages – officers' expense of $7,459.

Purchased Power (615)

The Utility's Expense Summary reflects $2,340 in this account. The Utility was only able to provide nine electric power invoices for the test year. Audit staff was able to substantiate the amounts for two of the three missing invoices using payment information included on subsequent invoices. Also, audit staff estimated the missing December 2014 invoice amount by using the average of the billed amounts for January through November 2014. Consequently, staff decreased this account by $63 to reflect the correct test year purchased power expense, resulting in an adjusted balance of $2,277. The $63 adjustment includes removal of $5 in late payment fees that are not recoverable through the Utility's rates.

In addition, as discussed in Issue 2, staff is recommending an EUW adjustment of 9 percent. Therefore, staff decreased the adjusted balance by $205 ($2,277 x .09 = $205) to reflect a 9 percent EUW adjustment. Staff's total adjustment is a decrease of $268. Therefore, staff recommends purchased power expense of $2,072.

Fuel for Power Production (616)

The Utility's Expense Summary does not include this account. Audit staff determined the Utility paid a total of $219 for propane fuel for its emergency generator at the water plant during the test

year. Therefore, staff increased this account by $219, and recommends fuel for power production expense of $219 for the test year.

Chemicals (618)

The Utility's Expense Summary reflects chemicals expense of $1,431. Based on audit staff's review, staff increased this account by $131 to reflect the appropriate test year chemicals expense, resulting in an adjusted chemicals expense of $1,562. However, as discussed Issue 2, staff is recommending an EUW adjustment of 9 percent. Accordingly, staff decreased this account by $141 to reflect an EUW adjustment of 9 percent ($1,562 x .09 = $141). Staff's net adjustment is a decrease of $10, resulting in a recommended chemicals expense of $1,421.

Contractual Services – Overview

Subsequent to the test year, the Utility made several changes in its contractual service providers that will affect the contractual service expenses going forward. The changes are intended to address concerns raised by staff and the Utility's customers, and improve the Utility's operations going forward. Staff believes these changes will be beneficial to both the Utility and its customers. Accordingly, staff believes it would be appropriate to make some pro forma adjustments to reflect those changes. Due to the level of changes made, staff believes it will be helpful to provide an overview of the changes between the test year and current year's contractual service providers. It should be noted that the Utility does not have written contracts for any of the current contractual service providers.

As background information, the Utility began the test year with four part-time contractual service providers; an office manager, management assistant, billing assistant, and plant operator. The contractual office manager and plant operator services also included on-call work for emergency purposes. The first office manager left abruptly in the middle of the test year, causing the management assistant to immediately assume the office manager's duties, in addition to continuing the management assistant duties. Due to cash flow shortages, the Utility did not replace the management assistant, and only requested assistance from the billing assistant a few times during the test year. Consequently, the Utility only operated with an office manager and plant operator for part of the test year and much of 2015. It appears that the abrupt management changes during the test year and limited staffing may have contributed to many of the billing and service issues raised by the Utility's customers.

In September 2015, the second office manager discontinued working for the Utility. The Utility subsequently hired three additional contractual service providers; an accountant, a Utility service technician, and the former billing assistant. The Utility expanded the duties of the new contractual service providers to cover more utility functions than were covered by the previous workers. The expanded duties and specific skills of the new contractual service providers are expected to improve the Utility's operations and customer service.

In order to reduce overhead costs, the Utility owner never established a physical office in the service area. Previously, the only option for customers who wanted to pay their bill in person was to go to the office manager's house to drop off the payment or arrange for the office manager to pick up the payment at their house. The recently hired contractual accountant has an office near the service area and has agreed to accept customer payments at that location in order to help address this concern. The contractual accountant now serves as the office manager and

bookkeeper for the Utility. The contractual accountant's services include: updating and maintaining the Utility's books and records; preparing and issuing monthly bills; preparing the monthly billing detail reports; collecting customer payments and deposits; providing a location where customers may mail or drop-off payments; providing a utility drop-box where customers may drop off payments during non-business hours; checking for payments daily during the work week; transmitting customer payments electronically to the bank on a daily basis when received during the work week; reviewing payment records and assisting with service disconnections due to non-payment; accepting customer calls regarding billing questions; handling customer complaints regarding billing issues; and assisting with preparing the financial information for the Utility's annual report. The accountant's contractual fees will be discussed under the Contractual Services – Professional (631) section below.

The contractual utility service technician's duties include assisting with general system repairs, customer service repairs, new customer connections, service disconnections, monthly meter reading, mowing, answering the Utility's emergency cell phone, and being on-call 24 hours a day, 7 days a week. The utility service technician's meter reading fees will be discussed in Contractual Services – Billing (630), and the fees for the remaining duties will be discussed in the Contractual Services – Other (636).

During the test year, the Utility hired a contractual billing assistant to analyze the monthly accounts receivable and assist the office manager with collection of past due accounts for both Sunrise and Alturas. Due to cash flow shortages, the Utility only requested service from the billing assistant during part of the test year. In September 2015, the Utility re-hired the contractual billing assistant with expanded duties. The billing assistant's current duties include: answering the Utility's main phone number; assisting with customer complaints; assisting with reviewing and correcting the Utility's customer deposit records; assisting with researching customer records as needed; analyzing the monthly accounts receivable; and assisting with collection of past due accounts. The billing assistant's fees will be discussed in the Contractual Services – Billing (630) section below.

Contractual Services - Billing (630)

The Utility's Expense Summary reflects $9,802 in this account for meter reading provided by the former office manager and bill collection services provided by the billing assistant. In September 2015, the Utility hired a contractual utility service technician to begin providing the monthly meter reading services. The utility service technician's contractual fee for meter reading is $250 per month or $3,000 per year, representing an annual increase of $60 over the test year fees of $2,940. Staff believes the new meter reading fee is reasonable, and that it would be appropriate to include a pro forma adjustment to reflect the $60 increase going forward.

During the test year, the Utility hired a contractual billing assistant to review the monthly accounts receivable and assist with the collection of past due accounts for both Sunrise and Alturas at a monthly fee of $400, for an annual total of $4,800. However, the Utility only incurred $2,100 of the contracted $4,800 fees for Sunrise and Alturas combined. The Utility indicated that it had only requested billing assistance from this vendor for part of the test year due to cash flow shortages.

As discussed above, in September 2015, the Utility re-hired the contractual billing assistant and indicated that the previous duties would be expanded to include answering the Utility's main phone number, assisting with customer complaints, and assisting with reviewing and correcting the Utility's customer deposit records. The new contractual fee is still $400 per month, which covers approximately 40 hours of work per month at $10 per hour, for an annual total of $4,800 for Sunrise and Alturas combined. The Utility has not fully supported its request for the increase in this expense over the audited test year expense. However, staff confirmed that the billing assistant is currently working with the office manager to review delinquent accounts and address customer complaints. Staff believes it will be beneficial to both the Utility and its customers to have a billing assistant available on a regular basis to assist customers with service complaints. Staff believes the hourly rate of $10 is reasonable. Also, staff believes the request for 40 hours of work per month is reasonable considering that the work will cover both Alturas and Sunrise. At the December 9, 2015, noticed informal meeting, OPC requested that the contractual worker expenses be reviewed to avoid any duplication of duties. Based on staff's review, it does not appear that there will be a duplication of duties between the billing assistant and office manager. Staff determined that the appropriate allocation of the contractual billing assistant's expense to Sunrise is $3,744 ($4,800 x .78 = $3,744). Staff decreased this account by $3,118 to remove the unsupported expenses in this account and reflect a pro forma increase in the contractual billing services expense.

Staff's net adjustment to this account is a decrease of $3,058 ($60 - $3,118 = -$3,058). Therefore, staff recommends contractual services – billing expense of $6,744.

Contractual Services - Professional (631)

The Utility's Expense Summary reflects $400 in this account for preparation of the Utility's Annual Report and Federal Tax Return by its CPA. Audit staff verified that this amount is appropriate for the test year, and that no adjustments are necessary.

As discussed in Issue 4, Rule 25-30.115, F.A.C., requires that water and wastewater utilities maintain their accounts and records in conformity with the 1996 NARUC USOA. Audit staff determined that the Utility was not maintaining its books and records on a monthly basis as required. During the test year, the Utility did not have any employees or contractual service providers specifically hired to work on the Utility's day-to-day bookkeeping operations. Therefore, in the May 1, 2015 Staff Report, staff recommended a pro forma adjustment to include an allowance for contractual bookkeeping expense to assist the Utility in meeting the rule requirement going forward.

Subsequently, in September 2015, the Utility hired a contractual accountant to handle the Utility's bookkeeping, billing, payment collections, billing inquiries, and billing complaints. As of the end of January 2016, the Utility had not yet begun providing any accounting records to the accountant to begin maintaining the Utility's books and records. Due to the severe accounting deficiencies and the Utility's difficulty in complying with both audit and technical staffs' requests for accounting supporting documentation during this case, staff believes it will be beneficial to the Utility and its customers for the Utility to allow a trained accountant to handle the Utility's day-to-day bookkeeping activities. Further, staff believes that properly maintained accounting records may help the Utility to better monitor and manage its cash flow. Therefore,

despite the Utility's delay in implementing this process, staff believes it would be appropriate to make a pro forma adjustment to recognize the contractual bookkeeping expense going forward.

By a letter dated January 15, 2016, the contractual accountant estimated that the initial set-up fee for Sunrise will be $250, for setting up the Utility's books and bringing forward the beginning balances. After the set-up is complete, the monthly fee will be $135 per month, which equals $1,620 per year. Because the initial set-up fee is non-recurring in nature, staff believes it would be appropriate to amortize that portion of the bookkeeping expense over a five-year period, resulting in an annual expense of $50 ($250 / 5 = $50). Therefore, staff increased this account by $1,670 to reflect the pro forma increase for the recurring annual bookkeeping fees of $1,620 and the non-recurring fees of $50.

In addition, the Utility has requested recovery of $4,577 in outstanding legal fees related to Sunrise's defense in a 2013 law suit filed by the Utility's former contract operator, Blount Utilities, Inc. (Blount), for outstanding payments that occurred prior to the test year. The outstanding legal fees were due in full before the end of 2015. On July 22, 2014, a Judgment was issued against Sunrise for $2,926 by the Tenth Judicial Circuit Court in favor of Blount for the uncontested outstanding balance owed for contractual services performed by Blount prior to the test year. The parties subsequently reached a settlement agreement regarding a payment plan for the balance owed, and payments of $271 per month started on August 2014, which are to continue until the balance is extinguished. The outstanding payable balance to Blount was approximately $2,440 as of December 31, 2014, the end of the test year.

In order to determine if it is appropriate to allow recovery of utility litigation costs from the ratepayers, the Commission generally considers whether the litigation resulted in a benefit to the customers, whether the customers gained a benefit that would not have occurred absent the litigation process, and the materiality of the litigation costs. For example, if a utility engaged in legal action to oppose government required plant improvements that it deemed to be unnecessary and won the law suit, the customers would receive the direct benefit of a lower rate base and thus lower rates. In the instant case, staff does not believe the litigation resulted in any direct benefit to the customers. The litigation was the result of one of the Utility's former managers not paying the plant operator in a timely manner for services rendered. The Utility was successful in receiving a lower interest rate as a result of the litigation. However, since Commission practice is to disallow recovery of late payment fees or interest charges resulting from untimely payments, the reduced interest rate is a direct benefit to the stockholders/owners rather than the customers. In addition, the interest savings is not sufficient to offset the litigation costs. Consequently, the legal action only served to increase the Utility's expenses rather than reduce them to the benefit of the customers. Based on the above, staff does not believe it would be appropriate to require the customers to pay the litigation costs.

Staff reviewed the Utility's last SARC and recent Annual Reports to determine if the Utility incurred any other legal fees in recent years that would be more representative of routine, recurring legal services. Based on the information available, it appears that the Utility has not incurred any other legal fees in recent years. Also, staff requested supporting documentation for any legal fees incurred by the Utility to correct the warranty deed error discussed in Issue 4. As

of the writing of this recommendation, the Utility has not provided that information. Consequently, staff does not recommend an allowance for annual legal fees at this time.

Staff's total adjustment to this account is an increase of $1,670 to include the new contractual accountant's bookkeeping services. Therefore, staff recommends contractual services – professional expense of $2,070.

Contractual Services – Testing (635)

The Utility's Expense Summary does not include this account. Audit staff determined the Utility incurred $2,340 in testing expense for the test year. Accordingly, staff increased this account by $2,340.

In addition, the Utility was required by the PCHD on behalf of the DEP to conduct triennial water tests by the end of 2015. The Utility provided invoices from the contract operator totaling $4,525 for the triennial tests. Therefore, staff increased this account by $1,508 ($4,525 / 3 = $1,508) to include a pro forma adjustment to reflect the three-year amortization of the triennial water test costs.

Finally, the Utility requested a pro forma increase to cover $3,800 in testing expenses for additional trihalomethane (TTHM) and haloacetic acid (HAA5) testing required by the PCHD on a quarterly basis beginning in the last quarter of 2015 and continuing through the third quarter of 2016. The first quarter's tests have been completed and it is anticipated that the second quarter's test will be completed prior to implementation of any rates approved by the Commission in this case. According to the operator's invoices, the cost for the first quarter's tests is $950 and the estimated cost for the remaining three quarters is $2,850, for a total of $3,800. The Utility's operator also provided documentation from the PCHD to support that the additional testing is required. The additional testing requirement was caused by the Utility exceeding the TTHM limit on one test, and therefore, is not part of the Utility's normally recurring tests. Rule 25-30.433(8), F.A.C., requires that non-recurring expenses be amortized over a five-year period unless a shorter or longer period of time can be justified. Amortizing the $3,800 testing expense, over a five-year period, results in an annual increase of $760 in the Utility's testing expense. Due to the serious nature of this testing requirement, staff believes it warrants inclusion in this rate proceeding.

In accordance with Commission practice, staff calculated a Phase II revenue requirement for the pro forma testing that will not be completed until the second and third quarters of 2016 and determined that the Phase II revenue requirement would be only $438 or 0.56 percent above the Phase I revenue requirement. If all of the pro forma testing expense is included in Phase I, rate case expense can be reduced by a total of $182 or $46 per year over the four-year amortization period due to elimination of the additional customer noticing that would be required upon implementation of the Phase II rate increase. Although pro forma plant additions and expenses are often addressed using a phased approach, staff believes it would be appropriate to include the pro forma testing expenses in the initial revenue requirement in this case because of the minimal impact of the pro forma testing expense on the initial revenue requirement, as well as the additional benefit of reducing rate case expense. Therefore, staff increased this account by $760 to reflect a pro forma increase to cover the additional TTHM and HAA5 testing expense. Staff recommends that the Utility be required to file documentation in this docket by December 31,

2016, showing that the tests have been completed. The documentation should include a copy of the test results and final invoices. However, staff does not believe it is necessary to hold the docket open until this information is filed since the PCHD is monitoring the Utility's completion of these tests and the test results.

Staff's total adjustment to this account is an increase of $4,608. Therefore, staff recommends contractual services – testing expense of $4,608.

Contractual Services - Other (636)

The Utility's Expense Summary reflects $29,173 in this account broken down by $10,008 for contractual office management; $10,139 for contractual utility operations; and $9,026 for supplies, maintenance, and repairs. In September 2015, the Utility hired a contractual accountant to take over the majority of the office management duties. Staff confirmed that the contractual accountant has charged Sunrise and Alturas a combined fee of $1,200 per month beginning September 10, 2015, through January 10, 2016. It was initially expected that the $1,200 fee would only be charged for the first three months for additional work required to learn the billing system, bring the billing records up-to-date, and address unresolved billing inquiries and complaints. However, the workload has not yet decreased as expected. Consequently, the $1,200 per month fee will continue until the office begins to operate more smoothly, and then will decrease to $800 per month thereafter. At this time, it is expected that the $1,200 per month fee will be needed through May 2016. In addition to the monthly fee, the contractual accountant will also be reimbursed for any additional costs incurred, such as postage and utility office supplies.

Because the additional $400 per month fee is considered to be temporary and part of the initial set-up cost under the new office management arrangement, staff believes it would be appropriate to allow recovery of those costs as non-recurring expenses over a five-year period. The total non-recurring expense for Sunrise and Alturas combined is $3,600 ($400 x 9 months = $3,600), which translates to an annual expense of $720 when amortized over five years. Staff determined that the appropriate allocation of the non-recurring contractual office management fees to Sunrise is $562 ($720 x .78 = $562). The remaining $800 per month fee should be treated as a recurring expense, which equals $9,600 per year. The appropriate allocation of the recurring contractual office management expense to Sunrise is $7,488 ($9,600 x .78 = $7,488). Sunrise's total contractual office management expense allocation, including both the recurring and non-recurring fees, is $8,050. Therefore, staff decreased this account by $1,958 to reflect the pro forma change in contractual office management expense ($8,050 - $10,008 = -$1,958).

As additional information, in its June 10, 2015, letter, OPC expressed concern about the Utility's procedures for handling cash payments from customers. Specifically, OPC expressed concern about whether or not the cash payments are being properly recorded against accounts receivable, whether or not the cash collections of miscellaneous service charges are being recorded and included in test year revenues, and whether or not the accounts receivable aging reports accurately reflect these collections.

Staff determined that the Utility includes the type of payment in its billing records when recording monthly bill payments. For example, the records indicate if the payment was made by cash, check, money order, or money transfer. In addition, the Utility's customer deposit records

indicate if the initial customer deposits were paid by cash, check, money order, or money transfer.

The area of concern appears to be limited the handling of miscellaneous service charges. The Utility owner acknowledged that he had authorized the contractual office manager and office manager assistant to keep any miscellaneous service charges collected as payment for their work related to the customer disconnections and reconnections. Because miscellaneous service charges are designed to cover the additional costs incurred to provide a specific miscellaneous service, it is acceptable for the Utility to use those funds to pay for the contractual work needed to accomplish those services. However, it is incorrect for the Utility to omit the miscellaneous service charge assessments and payments from the billing records and revenues.

In addition, staff attempted to review the Utility's billing records to determine whether or not the Utility properly assessed the miscellaneous service charges in accordance with Commission rules and the Utility's approved tariff. The Utility was not able to provide all of the records that are needed to complete this type of review. The Utility owner informed staff that the former office manager had deleted 11 months of billing records in error. Therefore, the only records available during that time period are the specific reports that were printed prior to the deletion. Based on the available records, staff believes that the Utility does regularly experience issues with delinquent payments. However, staff was unable to determine if the customers were given proper disconnection notices and assessed the miscellaneous service charges within the proper timeframes prescribed by Commission rules during the test year.

Based on staff's review, it appears the Utility may be in violation of the following rules and statute. Rule 25-30.335(7), F.A.C., requires that utilities shall maintain a record of each customer's account for the most current two years so as to permit reproduction of the customer's bills during the time that the utility provided service to that customer. Rule 25-30.320, F.A.C., sets forth the guidelines that utilities must follow when refusing or discontinuing service, including disconnection for non-payment of bills. Section 367.081, F.S., requires that a utility may only charge rates and charges that have been approved by the Commission.

Staff does not believe show cause proceedings should be initiated at this time for the apparent violations related to the maintenance of customer records and handling of miscellaneous service charges. It appears that the Utility has taken steps to correct these issues. The Utility indicated that it has discontinued accepting customer payments in the field. As discussed previously, customers now have the additional option of paying in person or using a drop box at the contractual accountant's office. Based on staff's review, it appears that the Utility has taken the necessary steps to ensure that future miscellaneous service charges are correctly recorded. Also, the separation of duties between the office manager and utility service technician working in the field allows for better oversight of the handling of cash collections. Finally, under the Utility's current procedures, customers are first sent a letter regarding their past due payment, and then sent a second notice regarding disconnection only if the bill remains unpaid. Providing a past due notice prior to a disconnection notice goes beyond what it required in the Rule and helps to demonstrate the Utility's willingness to work with customers to resolve payment issues prior to disconnecting service. However, staff believes Sunrise should be put on notice that if the Utility fails to maintain its customer records or to properly account for miscellaneous service charges in

compliance with Commission regulations in the future, Sunrise may be subject to a show cause proceeding by the Commission, including penalties.

As noted above, the Utility included $10,139 in this account for contractual utility operations. Staff determined that the appropriate contractual operator's expense for Sunrise is $10,312, which includes the plant operator's monthly fees, inspection reports, repairs, and flushing. In its June 10, 2015, letter, OPC expressed a concern about possible duplication of mowing expenses because the test year included charges for mowing by the office manager and plant operator. As discussed above, the new contractual utility service technician will be responsible for mowing the plant site going forward. Therefore, staff did not include any mowing expense in the $10,312 operator's expense calculation. Although the utility service technician will be assisting with repairs in the field going forward, staff believes there will still be a need for the operator to make utility repairs related to the plant. Consequently, staff does not believe a reduction to the repair portion of the operator's expenses is necessary. The operator's monthly fees are allocated between Sunrise and Alturas based on ERCs. The inspection report, repair, and flushing expenses are based on direct costs for Sunrise. Staff increased this account by $173 to reflect the appropriate contractual operator's expense ($10,312 - $10,139 = $173).

The Utility's Expense Summary reflected $9,026 for supplies, maintenance, and repairs. The Utility's total includes test year repairs of $2,299 based on one invoice for a broken water main repair. Staff believes it is reasonable to expect that the Utility may require this level of repairs on an annual basis. Therefore, staff does not believe it is necessary to amortize the test year repair as non-recurring. As noted above, the Utility's Expense Summary also includes expenses related to chemicals, testing, and miscellaneous expenses. Audit staff reclassified those expenses to the correct expense accounts. In addition, audit staff determined that some expenses were unsupported and should be removed. Accordingly, staff decreased this account by $6,727 ($2,299 - $9,026 = -$6,727) to reflect the appropriate repair expense for the test year.

In its June 10, 2015, letter regarding the Alturas SARC, OPC noted that the Alturas test year expenses included an invoice for $225 for checking meters, but that only $56 of that expense was for checking meters for Alturas. The remaining $159 was for checking meters for Sunrise. OPC proposed that $159 should be removed from the Alturas expenses. Staff agrees that it would be appropriate to reclassify $159 of the meter testing expense to Sunrise. Therefore, staff increased this account by $159.

In September 2015, the Utility hired a contractual utility service technician to assist with general system repairs, customer service repairs, new customer connections, service disconnections, monthly meter reading, mowing, answering the Utility's emergency cell phone, and being on-call 24 hours a day, 7 days a week. As discussed above under Account 630 – Contractual Services – Billing, the utility service technician's contractual fee for meter reading is $250 per month or $3,000 per year. In addition to the meter reading fees, the Utility indicated that it intends to pay this contractual service worker $250 per week for 25 hours of work at an hourly rate of $10 for the remaining work duties. This results in an annual expense of $13,000 for Sunrise and Alturas combined for the remaining field work and on-call duties. In addition, the Utility has requested a transportation expense allowance for this contractual service worker, which is discussed in more detail below under Account 650 – Transportation Expense.

The Utility has not fully supported its request for this level of contractual service fees. However, audit staff did verify test year expenses for the former office manager and office manager assistant related to some of these duties. In addition, the Utility provided several invoices for work performed by a new utility service technician in September and October 2015. Staff also confirmed that the Utility currently has a contractual service worker performing these job duties. Staff believes it will be beneficial to both the Utility and its customers to have a contractual utility service technician available on a regular basis to assist customers with service issues and to work on utility maintenance. Staff believes the hourly rate of $10 is reasonable and comparable to fees approved for other utilities. Also, staff believes the request for 25 hours of work per week is reasonable considering that the work will cover both the Sunrise and Alturas service territories. Consequently, staff increased this account by $10,140 to reflect Sunrise's allocation of this expense ($13,000 x .78 = $10,140).

In the Utility's 2011 SARC, the Commission approved a pro forma project related to the inspection and cleaning of the Utility's two hydropneumatic tanks. The project was completed during 2013, and the Utility provided documentation to support an actual expense of $3,811. Therefore, staff increased this account by $762 to reflect the five-year amortization of this non-recurring expense ($3,811 / 5 = $762). Based on audit staff's review, the expense should continue to be amortized through 2018.

Also in the Utility's 2011 SARC, the Commission approved a meter replacement program that would allow the Utility to replace 23 meters per year over 10 years at an annual expense of $1,359. In the instant proceeding, the Utility requested to continue the meter replacement program and to increase the annual expense to $3,500 based on the plant operator's cost estimate and the Utility's previous meter replacement expenses. In its June 10, 2015, letter, OPC indicated that it did not object to continuing the previously approved expense of $1,359, but had concerns about increasing the expense.

It appears that Sunrise may not be prepared to continue work on the meter replacement program at this time. The Utility has only completed slightly more than one year of the 10-year program. No meters have been installed since early 2014. The Utility does not have a meter testing program, has not identified the next batch of meters that need to be replaced, and has not stated when it will begin replacing meters again.

Staff determined that the Utility's actual cost to replace the first batch of meters was $4,439, which exceeded the estimated annual expense by $3,080. Based on the annual expense allowance of $1,359 that was included in the Utility's rates, the Utility is due to finish recovering the initial $4,439 expense by March 2016. Based on a review of the Utility's actual meter replacement costs and additional meter replacement cost research conducted by staff, it appears that an increase of the expense from $1,359 to $3,450 would be warranted if the program were continued. However, due to the Utility's lack of progress and a clear plan for getting the program back on track, staff believes it would appropriate to require the Utility to establish an escrow account to hold the meter replacement funds if the program were continued. Based on the updated expense of $3,450, the Utility would need to escrow $287.50 each month for the remaining eight to nine years of the program.

Staff advised the Utility's owner that staff intended to recommend discontinuation of the meter replacement program expense if Sunrise is unwilling to establish and properly maintain an escrow account for this purpose. Staff also advised the Utility owner that discontinuation of the program would simply result in the Utility returning to the traditional method of capitalizing meter replacements and reflecting the adjustments in rate base. In response to staff's request for information received January 26, 2016, letter, the Utility indicated that it would return to the traditional method of capitalizing meter replacements on an as needed basis. Therefore, staff recommends that the meter replacement program be discontinued at this time. The Utility's test year did not include any expenses related to this program, therefore, no accounting adjustments are necessary to reflect discontinuation of the meter replacement program.

Finally, as discussed above, a Judgment was issued against the Utility for $2,926 for outstanding payments owed to Blount for contractual services related to the plant operation and maintenance. The Utility has requested consideration of the outstanding balance and monthly payments of $271 in the instant case. Although the Judgment and payment plans were finalized during the 2014 test year, the outstanding balance is for work performed by Blount prior to the test year. Historically, the Commission has determined that the recovery of past expenses from current customers constitutes retroactive ratemaking and is disallowed. Accordingly, staff does not believe it would be appropriate to recognize the past amounts owed to Blount in the instant proceeding.

Staff's net adjustment to this account is an increase of $2,549 (-$1,958 + $173 - $6,727 + 159 + 10,140 + 762 = $2,549). Therefore, staff recommends contractual services – other expense of $31,722.

Transportation Expense (650)

The Utility's Expense Summary reflects $1,976 in this account. Audit staff could not verify how this amount was determined. Staff determined that the former office manager's expense included mileage reimbursements of approximately $97 for Sunrise and $14 for Alturas during January through May 2014. The expense was primarily related to mileage incurred conducting customer disconnections and reconnections, and was calculated based on a mileage rate of $0.50 per mile. The second office manager during the test year did not claim any mileage, but expressed concern about having to use her personal vehicle for utility work at her own expense.

In response to staff's request for information received January 26, 2016, the Utility requested a transportation expense for the contractual utility service technician of $75 per month, or $900 annually, for Sunrise and Alturas combined. The Utility did not provide any documentation to support this request, such as records of any recent mileage reimbursements or written contracts indicating that transportation expense will be provided. However, in consideration of the Utility's previous practice of reimbursing the former office manager's mileage expense and the physical distance between the Sunrise and Alturas service areas, staff believes it would be appropriate to include a mileage allowance. Also, it appears that the lack of full reimbursement of additional expenses incurred by the Utility's contractual service workers may be a contributing factor in the high level of turnover experienced by Sunrise and Alturas. Inclusion of a mileage allowance may help the Utility retain its contractual service workers longer, thereby improving the consistency and stability in the Utility's field operations.

The requested $75 per month transportation expense would allow reimbursement of approximately 34 miles per week at the test year mileage rate of $0.50 per mile. The Alturas and Sunrise service territories are located approximately 18 miles a part. The Utility did not explain how it calculated the requested $75 per month transportation allowance. Staff believes the majority of the utility service technician's work will be conducted within each Utilities' service territory with minimal driving required. However, on occasion it will be necessary for the utility service technician to drive between the Alturas and Sunrise service territories or to a store to purchase parts for repairs. Staff believes the Utility's requested expense should be sufficient to cover the transportation expense for both the more frequent in-territory driving, as well as the less frequent out-of-territory driving. Staff determined that the appropriate allocation of the transportation expense to Sunrise is $702 ($900 x .78 = $702). The remaining $198 will be allocated to Alturas. Consequently, staff decreased this account by $1,274 to remove the unsupported test year expenses and reflect a pro forma transportation expense increase. Staff recommends transportation expense of $702.

Insurance Expense (655)

The Utility's Expense Summary reflects $2,010 in this account. Staff decreased this account by $182 to reflect the current year's general liability insurance premium, and recommends insurance expense for the test year of $1,828.

Regulatory Commission Expense (665)

The Utility's Expense Summary does not include this account. Staff increased this account by $344 to reflect the annual amortization of rate case expense approved in the Utility's 2011 SARC that will continue to be amortized until December 1, 2016. Regarding the instant case, the Utility is required by Rule 25-22.0407, F.A.C., to provide notices to its customers of the customer meeting and notices of final rates in this case. For noticing, staff estimated $241 for postage expense, $132 for printing expense, and $25 for envelopes. This results in $398 for the noticing requirement. The Utility paid a $1,000 rate case filing fee.

The Utility also provided an invoice for accounting fees of $450 for work performed by the Utility's CPA related to the SARCs for both Sunrise and Alturas. The work performed was similar for both Utilities. Therefore, staff believes it would be appropriate to allow Sunrise to recover half or $225 of the accounting expense and allow Alturas to recover the remaining $225 of rate case related accounting expense. The Utility also provided invoices for $1,025 in additional work performed by the Utility's contract operator to assist with the Sunrise SARC, such as answering staff data requests related to plant operations and attending the customer meeting. Staff has reviewed the invoices and believes it would be appropriate to allow recovery of these expenses in rate case expense. Pursuant to Section 367.0816, F.S., rate case expense is amortized over a four-year period. Based on the above, staff recommends total rate case expense for the instant case of $2,648 ($398 + $1,000 + $225 + $1,025), which amortized over four years is $662. Staff's total adjustment to this account is an increase of $1,006, resulting in a recommended regulatory commission expense of $1,006.

Bad Debt Expense (670)

The Utility's Expense Summary reflects $3,899 in this account. During the audit, the Utility provided a list of 11 accounts that were written-off during the test year for a total of $4,167,

which equals 5.56 percent of the test year revenues or 5.05 percent of staff's recommended revenue requirement. In its June 10, 2015, letter, OPC expressed concern that the Utility's bad debt expense is excessive and noted that one account had an unusually large write-off of $1,094. The Utility did not provide any supporting documentation showing how it calculated the bad debt write-offs, but did acknowledge that the test year bad debt expense included multiple years of bad debt write-offs.

Commission practice is to calculate bad debt expense using a three-year average, typically based on the test year plus two years of Annual Report data. It appears that the bad debt expense for the two years prior to the test year may have included multiple years of write-offs as well. Therefore, staff is unable to calculate a reliable three-year average using the traditional method. As an alternative, staff believes it would be appropriate to calculate an average bad debt expense based solely on the test year expense. This approach results in a bad debt expense of $1,389 ($4,167 / 3 = $1,389), that is 1.68 percent of staff's recommended revenue requirement.

At the December 9, 2015, noticed informal meeting, OPC indicated that it believes the large write-offs may be the result of errors in the recording of cash payments and poor bookkeeping practices, and that bad debt expense should not exceed 1 percent. Staff shares OPC's concerns about the accuracy of the bad debt write-offs. However, staff reviewed a sample of the Utility's billing records and determined that the Utility is experiencing issues with delinquent customer accounts, and may need to write-off bad debt periodically.

In addition, staff reviewed a sample of 15 SARCs, which had bad debt expense ranging from zero to over 4 percent, with 87 percent of the sample falling below the 2 percent range. Therefore, staff believes a bad debt expense of 1.68 percent falls within a reasonable range. Although staff is not opposed to OPC's 1 percent suggestion, that approach would actually increase the bad debt expense for Sunrise's sister company, Alturas, above the amount recommended by staff in that docket. In an effort to provide as much uniformity in the ratesetting methods used for both companies, staff believes it would be more appropriate calculate a specific bad debt expense for each company based on the test year data. In addition, based on staff's review of the available billing records, it appears that Sunrise has a larger incidence of high delinquent balances than Alturas. Based on the above, staff decreased this account by $2,510, and recommends a bad debt expense of $1,389.

Miscellaneous Expense (675)

The Utility's Expense Summary reflects $6,342 in this account. Staff decreased this account by $1,371 to reflect the appropriate test year miscellaneous expense for the Utility's annual permit and license renewal fees, cell phones, postage, and office supplies. Staff used the Utility's direct actual expense for the PCHD annual drinking water permit, the Southwest Florida Water Management District annual water permit, and the Department of State's Division of Corporation's annual filing fee. In addition, staff used the ERC allocation method to allocate the common miscellaneous expenses related to the Utility's cell phone, postage, and office supplies.

In its June 10, 2015, letter, OPC noted the Utility's test year miscellaneous expense included additional work performed by the contractual plant operator to assist with the transition between office mangers. OPC believes this is a non-recurring expense that should not be included in setting future rates. Staff agrees that this work is outside the scope of the operator's regularly

recurring duties, however, staff believes it would be more appropriate to amortize the non-recurring expense over a five-year period consistent with Rule 25-30.433(8), F.A.C. The operator's expense was $740 for Sunrise and Alturas combined. Staff increased this account by $115 to reflect Sunrise's amortized allocation of that expense ($740 / 5 = $148; $148 x .78 = $115).

The Utility's 2011 SARC included recovery of the Utility's annual membership dues to the Florida Rural Water Association (FRWA). However, the Utility did not renew its membership each year following that case. Subsequent to the test year, in August 2015, the Utility became a member of the FRWA again and provided proof of payment of the Utility's annual membership dues. Therefore, staff increased this account by $202 to reflect a pro forma adjustment for the Utility's annual FRWA membership dues. Staff believes the Utility should be reminded that the membership dues included in the Utility's revenue requirement are intended to serve as annual recurring expense for the purpose of renewing the Utility's FRWA membership each year.

In addition, staff increased this account by $108 to make a pro forma adjustment to reflect Sunrise's amortized allocation of the Utility's purchase of a billing software update, an additional billing software license, and billing software training for the contractual office manager. Finally, staff increased this account by $60 to make a pro forma adjustment to reflect Sunrise's amortized allocation of an electronic bank deposit machine that enables the contractual office manager to electronically deposit customer's payments on the business day the payments are received. The Utility made these pro forma purchases in an effort to improve the Utility's billing and collection practices. Therefore, staff believes it would be appropriate to make these pro forma adjustments and allow the Utility to recover these expenses as non-recurring expenses over a five-year period. Staff's net adjustment to this account is a decrease of $885 (-$1,371 + 115 + 202 + 108 + 60 = -$885), resulting in a recommended miscellaneous expense of $5,457 for the test year.

Operation and Maintenance Expense (O&M Summary)

Based on the above adjustments, O&M expense should be decreased by $2,676, resulting in total O&M expense of $66,697. Staff's recommended adjustments to O&M expense are shown on Schedule Nos. 3-A and 3-B.

Depreciation Expense (Net of Amortization of CIAC)

No depreciation or CIAC amortization expense balances were available for 2014. Audit staff calculated depreciation expense using the prescribed rates set forth in Rule 25-30.140, F.A.C., and determined a test year depreciation expense of $4,559. Staff decreased this account by $51 to reflect retirement of certain pro forma items from the Utility's last SARC, as discussed in Issue 4, reducing the test year depreciation expense to $4,508.

As discussed in Issue 4, the Utility's CIAC became fully amortized in August 2015. Consequently, the CIAC amortization expense ended in August 2015 as well. Therefore, staff recommends no CIAC amortization expense. This results in a net depreciation expense of $4,508 ($4,508 - $0). Therefore, staff recommends depreciation expense of $4,508.

Taxes Other Than Income (TOTI)

The Utility's Expense Summary reflects $5,731 in TOTI for the test year, although an official balance for 2014 was not yet available at the time of staff's audit. Staff increased this account by $249 to reflect the appropriate test year RAFs. Also, staff decreased this account by $1,745 to reflect the appropriate property taxes and remove license and permit renewal fees that are already included in Account No. 675 – Miscellaneous Expense. Staff's adjustment includes a $19 decrease from the Utility's test year property taxes based upon the 2015 tax assessments. Staff's net adjustment to test year TOTI is a decrease of $1,496. In addition, as discussed in Issue 9, revenues have been increased by $7,510 to reflect the change in revenue required to cover expenses and allow the recommended operating ratio. As a result, TOTI should be increased by $338 to reflect RAFs of 4.5 percent of the change in revenues. Therefore, staff recommends TOTI of $4,573.

Operating Expenses Summary

The application of staff's recommended adjustments to Sunrise's test year operating expenses result in operating expenses of $75,778. Staff recommends that the Utility be required to file documentation in this docket by December 31, 2016, showing that the pro forma trihalomethane and haloacetic acid tests have been completed. The documentation should include a copy of the test results and final invoices. Operating expenses are shown on Schedule No. 3-A. The adjustments are shown on Schedule No. 3-B.

Issue 8: Should the Commission utilize the operating ratio methodology as an alternative means to calculate the revenue requirement for Sunrise, and, if so, what is the appropriate margin?

Recommendation: Yes. The Commission, on its own motion, should utilize the operating ratio methodology for calculating the revenue requirement for Sunrise. The margin should be 10 percent of O&M expense. (Golden, Vogel)

Staff Analysis: Section 367.0814(9), F.S., provides that the Commission may, by Rule, establish standards and procedures for setting rates and charges of small utilities using criteria other than those set forth in Sections 367.081(1), (2)(a), and (3), F.S. Rule 25-30.456, F.A.C., provides an alternative to a staff-assisted rate case as described in Rule 25-30.455, F.A.C. As an alternative, utilities with total gross annual operating revenue of less than $275,000 per system may petition the Commission for staff assistance in alternative rate setting.

Although Sunrise did not petition the Commission for alternative rate setting under the aforementioned Rule, staff believes that the Commission should exercise its discretion to employ the operating ratio methodology to set rates in this case. The operating ratio methodology is an alternative to the traditional calculation of revenue requirements. Under this methodology, instead of applying a return on the Utility's rate base, the revenue requirement is based on the margin of Sunrise's O&M expenses. This methodology has been applied in cases in which the traditional calculation of revenue requirements would not provide sufficient revenue to protect against potential variances in revenues and expenses.

By Order No. PSC-96-0357-FOF-WU (March 1996 Order), the Commission, for the first time, utilized the operating ratio methodology as an alternative means for setting rates. This order also established criteria to determine the use of the operating ratio methodology and a guideline margin of 10 percent of O&M expense. This criteria was applied again in Order No. PSC-97-0130-FOF-SU and most recently, the Commission approved the operating ratio methodology for setting rates in Order No. PSC-15-0535-PAA-WU.[14]

By the March 1996 Order, the Commission established criteria to determine whether to utilize the operating ratio methodology for those utilities with low or non-existent rate base. The qualifying criteria established by the March 1996 Order, and how they apply to the Utility are discussed below:

> 1. Whether the Utility's O&M expense exceeds rate base. The operating ratio method substitutes O&M expense for rate base in calculating the amount of return. A Utility generally would not benefit from the operating ratio method if rate base exceeds O&M expense. The decision to use the operating ratio method depends on the determination of whether the primary risk resides in capital costs or operating expenses. In the instant case, the rate base is less than the level of O&M expense. The Utility's primary risk resides

[14]Order Nos. PSC-96-0357-FOF-WU, issued March 13, 1996, in Docket No. 950641-WU, *In re: Application for staff-assisted rate case in Palm Beach County by Lake Osborne Utilities Company, Inc.*; Order No. PSC-97-0130-FOF-SU, issued February 10, 1997, in Docket No. 960561-SU, *In re: Application for staff-assisted rate case in Citrus County by Indian Springs Utilities, Inc.*; and Order No. PSC-15-0535-PAA-WU, issued November 19, 2015, in Docket No. 140217-WU, *In re: Application for staff-assisted rate case in Sumter County by Cedar Acres, Inc.*

with covering its operating expense. Based on the staff's recommendation, the adjusted rate base for the test year is $49,773, while adjusted O&M expense is $66,697.

2. Whether the Utility is expected to become a Class B utility in the foreseeable future. Pursuant to Section 367.0814(9), F.S., the alternative form of regulation being considered in this case only applies to small utilities with gross annual revenue of $275,000 or less. Sunrise is a Class C utility and the recommended revenue requirement of $82,448 is below the threshold level for Class B status ($200,000 per system).

3. Quality of service and condition of plant. As discussed in Issue 1, staff is recommending that the Utility's quality of service is unsatisfactory. As discussed in Order No. PSC-96-0357-FOF-WU, poor condition of plant and/or unsatisfactory quality may be due to a variety of factors such as age of the system, poor maintenance, neglect or malfeasance. These factors should not necessarily disqualify a utility from the operating ratio method. Instead, this highlights the need for an adequate revenue stream to properly test and treat the water, and maintain or renovate the system. The Order specifies that in those cases where the owner has contributed to the system's decline, it may be appropriate to pursue certificate revocation and/or an escrow of operating ratio method funds when improvements are needed to restore the utility system.

4. Whether the Utility is developer-owned. The current Utility owner is not a developer.

5. Whether the Utility operates treatment facilities or is simply a distribution system. The issue is whether or not purchased water costs should be excluded in the computation of the operating margin. Sunrise operates a water treatment plant and water distribution system.

Based on staff's review of the Utility's situation relative to the above criteria, staff recommends that Sunrise is a viable candidate for the operating ratio methodology. As outlined in Order Nos. PSC-96-0357-FOF-WU and PSC-97-0130-FOF-WU, the Commission determined that a margin of 10 percent shall be used unless unique circumstances justify the use of a greater or lesser margin. The important question is not what the return percentage should be, but what level of operating margin will allow the Utility to provide safe and reliable service and remain a viable entity. The answer to this question requires a great deal of judgment based upon the particular circumstances of the Utility.

Several factors must be considered in determining the reasonableness of a margin. First, the margin must provide sufficient revenue for the Utility to cover its interest expense. As discussed in Issue 4, the Utility does not currently hold any debt. Therefore, coverage of interest expense is not a concern in this case.

Second, use of the operating ratio methodology rests on the contention that the principal risk to the Utility resides in operating cost rather than in capital cost of the plant. Also, the operating ratio method recognizes that a major issue for small utilities is cash flow, therefore, the operating ratio method focuses more on cash flow than on investment. In the instant case, the Utility's primary risk resides with covering its operating expense. A traditional calculation of the revenue requirement may not provide sufficient revenue to protect against potential variances in revenues

and expenses. Under the rate base method, the return to Sunrise would be $4,048, which is enough to cover an approximate 6.07 percent variance in O&M expense. Staff believes $4,048 may be an insufficient financial cushion.

Third, if the return on rate base method was applied, a normal return would generate such a small level of revenue that in the event revenue or expenses vary from staff's estimates, Sunrise could be left with insufficient funds to cover operating expenses. Therefore, the margin should provide adequate revenue to protect against potential variability in revenue and expenses. If the Utility's operating expenses increase or revenues decrease, Sunrise may not have the funds required for day-to-day operations. Staff determined that a 10 percent margin would be applicable in this case.

At the December 9, 2015, noticed informal meeting, OPC proposed that the operating margin should be reduced from 10 percent to 9 percent due to the Utility's unsatisfactory quality of service. OPC's proposal would reduce the operating income by $667 and reduce the rate increase by 0.93 percent. Staff does not believe it is appropriate to use the operating margin as a penalty since the intended purpose of this methodology is to ensure that a utility will have an adequate revenue stream to operate the utility and make repairs. As discussed previously in Issues 1 and 7, staff recommends that Sunrise's officers' salaries be reduced by a 25 percent penalty due to the unsatisfactory quality of service. Staff's recommended salary penalty for Sunrise equals $2,486, which exceeds OPC's proposed reduction and sends a stronger signal regarding the Utility's need to address the unsatisfactory quality of service.

Conclusion

Staff believes the above factors show the Utility needs a higher margin of revenue over operating expenses than the traditional return on rate base method would allow. Therefore, in order to provide Sunrise with adequate cash flow to provide some assurance of safe and reliable service, staff recommends application of the operating ratio methodology. Applying a 10 percent margin would result in an operating margin of $6,670. When the criteria were established, the Commission found it was reasonable and prudent to initially limit the dollar amount of the margin to $10,000.[15] Because Sunrise's operating margin is well below the $10,000 limit, staff believes it would be appropriate to apply the full 10 percent margin. Therefore, staff is recommending a 10 percent operating margin ratio in the instant case.

[15]Order No. PSC-96-0357-FOF-WU, issued on March 13, 1996, in Docket No. 950641-WU, *In re: Application for staff-assisted rate case in Palm Beach County by Lake Osborne Utilities Company, Inc.*, p. 8.

Issue 9: What is the appropriate revenue requirement?

Recommendation: The appropriate revenue requirement is $82,448, resulting in an annual increase of $7,510 (10.02 percent). (Golden, Vogel)

Staff Analysis: Sunrise should be allowed an annual increase of $7,510 (10.02 percent). This will allow the Utility the opportunity to recover its expenses and a 10 percent cushion over its O&M expenses. The calculations are as follows:

Table 9-1
Water Revenue Requirement

Adjusted O&M Expense	$66,697
Operating Margin Ratio	x 10.00%
Operating Margin	$6,670
Adjusted O&M Expense	66,697
Depreciation Expense (Net)	4,508
Taxes Other Than Income	4,573
Income Taxes	0
Revenue Requirement	$82,448
Less Adjusted Test Year Revenues	74,938
Annual Increase	$7,510
Percent Increase	10.02%

Issue 10: What is the appropriate rate structure and rates for Sunrise?

Recommendation: The recommended rate structure and monthly water rates are shown on Schedule No. 4. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice. (Bruce)

Staff Analysis: Sunrise is located in Polk County within the SWFWMD. The Utility provides water service to approximately 247 residential customers and no general service customers. Approximately 5 percent of the residential customer bills during the test year had zero gallons, indicating a non-seasonal customer base. The average residential water demand is 4,797 gallons per month. The Utility's current water system rate structure for residential customers consists of a base facility charge (BFC) and a three-tier inclining block rate structure. The rate blocks are: (1) 0-5,000 gallons; (2) 5,001-10,000 gallons; and (3) all usage in excess of 10,000 gallons per month. The General service rate structure includes a BFC based on meter size and uniform gallonage charge.

Staff performed an analysis of the Utility's billing data in order to evaluate the appropriate rate structure for the residential water customers. The goal of the evaluation was to select the rate design parameters that: (1) produce the recommended revenue requirement; (2) equitably distribute cost recovery among the utility's customers; (3) establish the appropriate non-discretionary usage threshold for restricting repression; and (4) implement, where appropriate, water conserving rate structures consistent with Commission practice.

Staff evaluated whether it was appropriate to change the design of the Utility's current rate structure to a less aggressive rate structure due to its average residential consumption. Based on staff's analysis, establishing a BFC and two-tier inclining block rate structure with a separate block for non-discretionary usage results in a non-equitable distribution of cost recovery. The Alternative 1 and 2 rate designs shown in Table 10-1 reflect price decreases at the 0 and 1,000 gallon consumption levels and price decreases at the higher levels of consumption, which is contrary to our rate setting goals. Typically, when designing rates, all levels of consumption should receive price increases with increases escalating as consumption increases. Therefore, staff recommends an across-the-board increase of 10.39 percent to the existing rates and no repression adjustment to water consumption. The 10.39 percent increase reflects the recommended revenue increase excluding miscellaneous revenues. Table 10-1, on the following page, contains staff's recommended rates as an across-the-board increase to the existing rate structure and rates and two alternative rate structures, which include a block for non-discretionary usage.

Table 10-1
Staff's Recommended and Alternative Water Rate Structures and Rates

	RATES AT TIME OF FILING	STAFF RECOMMENDED ACROSS-THE-BOARD	ALTERNATIVE I (30% BFC)	ALTERNATIVE II (30% BFC)
Residential				
5/8" x 3/4" Meter Size	$9.07	$10.01	$8.11	$8.10
Charge per 1,000 gallons				
0-5,000 gallons	$2.89	$3.19	$3.80	
5,001-10,000 gallons	$3.18	$3.51	$3.96	
Over 10,000 gallons	$6.35	$7.01	$5.95	
0-5,000 gallons				$3.95
Over 5,000 gallons				$4.33
Typical Residential 5/8" x 3/4" Meter Bill Comparison				
3,000 Gallons	$17.74	$19.58	$19.51	$19.95
5,000 Gallons	$23.52	$25.96	$27.11	$27.85
10,000 Gallons	$39.42	$43.51	$46.91	$49.50

Source: Current tariffs and staff's calculations

Summary

The recommended rate structures and monthly water rates are shown on Schedule No. 4. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice.

Issue 11: What is the appropriate amount by which rates should be reduced four years after the published effective date to reflect the removal of the amortized rate case expense as required by Section 367.0816 F. S.?

Recommendation: The water rates should be reduced as shown on Schedule No. 4, to remove rate case expense grossed-up for RAFs and amortized over a four-year period. The decrease in rates should become effective immediately following the expiration of the four-year rate case expense recovery period, pursuant to Section 367.0816, F.S. The Utility should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. If Sunrise files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense. (Bruce, Golden, Vogel)

Staff Analysis: Section 367.0816, F.S., requires that the rates be reduced immediately following the expiration of the four-year period by the amount of the rate case expense previously included in the rates. The reduction will reflect the removal of revenues associated with the amortization of rate case expense, the associated operating margin, and the gross-up for RAFs which is $763. Using the Utility's current revenues, expenses, and customer base, the reduction in revenues will result in the rate decrease shown on Schedule No. 4.

Sunrise should be required to file revised tariff sheets no later than one month prior to the actual date of the required rate reduction. The Utility also should be required to file a proposed customer notice setting forth the lower rates and the reason for the reduction. If Sunrise files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense.

Issue 12: What are the appropriate initial customer deposits for Sunrise and in what manner should the Utility's noncompliance with Rule 25-30.311, F.A.C. be addressed?

Recommendation: The Utility's current initial customer deposits of $52 for the 5/8 inch x 3/4 inch residential meter size and two times the estimated average bill for all other residential and general service meter sizes should remain unchanged. The approved customer deposits should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475, F.A.C. The Utility should be required to charge the approved charges until authorized to change them by the Commission in a subsequent proceeding.

Staff recommends that the Utility continue to work on its compliance with Rule 25-30.311 F.A.C. The Utility should complete refunds within three months of the Commission Order. Sunrise should be required to reconcile its customer deposit accounts and records within a reasonable time. The Utility should be required to provide monthly reports beginning March 31, 2016, until it has satisfactorily refunded the appropriate amount of customer deposits and applied the appropriate interest on customer deposits. Staff should be given administrative authority to determine when the Utility is in compliance with Rule 25-30.311, F.A.C. Staff believes the Utility is moving forward to make corrective actions to resolve the issues regarding the customer deposits. Therefore, staff recommends that enforcement action is not warranted at this time. (Bruce)

Staff Analysis: Rule 25-30.311, F.A.C., contains the criteria for collecting, administering, and refunding customer deposits. Customer deposits are designed to minimize the exposure of bad debt expense for the Utility and, ultimately, the general body of ratepayers. Historically, the Commission has set initial customer deposits equal to two times the average estimated bill.[16] Currently, the Utility's existing initial deposit for residential and general service is $52 for the 5/8 inch x 3/4 inch meter size. Based on staff's recommended rates, the appropriate initial customer deposit for residential should be $51 for the 5/8 inch x ¾ inch meter size. Therefore, staff believes it is appropriate for the Utility's initial customer deposits remain unchanged for residential and general service meter sizes.

In response to staff's request for information, staff discovered that the utility was in apparent violation of Rule 25-30.311, F.A.C. During staff's review of the Utility's deposit records, staff noted that the Utility failed to properly record the amount of each deposit, failed to pay the appropriate amount of interest on customer deposits, and failed to refund residential customer deposits after 23 months. The Utility is working on correcting these issues and has taken some corrective actions to resolve the issues regarding the customer deposits. On February 15, 2016, the Utility provided a copy of its current Customer Deposit Report, which indicated that only a few customers had received a credit for interest payments on their deposits. Due to approximately the $3,400 of customer deposits that are due to be refunded, the utility has requested to pay customer deposits to those customers, who are entitled a refund, in a three month period to avoid financial hardship. Staff believes the request is reasonable. Staff

[16]Order No. PSC-13-0611-PAA-WS, issued November 19, 2013, in Docket No. 130010-WS, *In re: Application for increase in water rates in Lee County and wastewater rates in Pasco County by Ni Florida, LLC* and Order No. PSC-14-0016-TRF-WU, issued January 6, 2014, in Docket No. 130251-WU, *In re: Application for approval of miscellaneous service charges in Pasco County, by Crestridge Utility Corporation.*

recommends that the Utility continue to work on its compliance with Rule 25-30.311 F.A.C. The Utility should complete refunds within three months of the Commission Order. The Utility should be required to provide monthly reports until it has satisfactorily refunded the appropriate amount of customer deposits and applied the appropriate interest on customer deposits. Staff should be given administrative authority to determine when the Utility is in compliance with Rule 25-30.311, F.A.C. Staff believes the Utility is moving forward to make corrective actions to resolve the issues regarding the customer deposits. Therefore, staff recommends that enforcement action is not warranted at this time. However, staff believes Sunrise should be put on notice that the if the Utility does not resolve the customer deposit errors within a reasonable times and/or its deposit records are found to be out of compliance with Commission regulations in the future, the Utility may be subject to a show cause proceeding by the Commission, including penalties.

Based on the above, staff recommends that the Utility's current initial customer deposits of $52 for the 5/8 inch x 3/4 inch residential meter size and two times the estimated average bill for all other residential and general service meter sizes should remain unchanged. The approved customer deposits should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475, F.A.C. The Utility should be required to charge the approved charges until authorized to change them by the Commission in a subsequent proceeding.

Staff recommends that the Utility continue to work on its compliance with Rule 25-30.311 F.A.C. The Utility should complete refunds within three months of the Commission Order. Sunrise should be required to reconcile its customer deposit accounts and records within a reasonable time. The Utility should be required to provide monthly reports beginning March 31, 2016, until it has satisfactorily refunded the appropriate amount of customer deposits and applied the appropriate interest on customer deposits. Staff should be given administrative authority to determine when the Utility is in compliance with Rule 25-30.311, F.A.C. Staff believes the Utility is moving forward to make corrective actions to resolve the issues regarding the customer deposits. Therefore, staff recommends that enforcement action is not warranted at this time.

Issue 13: Should the recommended rates be approved for Sunrise on a temporary basis, subject to refund, in the event of a protest filed by a party other than the Utility?

Recommendation: Yes. Pursuant to Section 367.0814(7), F.S., the recommended rates should be approved for the Utility on a temporary basis, subject to refund, in the event of a protest filed by a party other than the Utility. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the temporary rates should not be implemented until staff has approved the proposed notice, and the notice has been received by the customers. Prior to implementation of any temporary rates, the Utility should provide appropriate security. If the recommended rates are approved on a temporary basis, the rates collected by the Utility should be subject to the refund provisions discussed below in the staff analysis. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(6), F.A.C., the Utility should file reports with the Commission Clerk's office no later than the twentieth of every month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed should also indicate the status of the security being used to guarantee repayment of any potential refund. (Golden, Vogel)

Staff Analysis: This recommendation proposes an increase in rates. A timely protest might delay what may be a justified rate increase resulting in an unrecoverable loss of revenue to the Utility. Therefore, pursuant to Section 367.0814(7), F.S., in the event of a protest filed by a party other than the Utility, staff recommends that the recommended rates be approved as temporary rates. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the temporary rates should not be implemented until staff has approved the proposed notice, and the notice has been received by the customers. The recommended rates collected by the Utility should be subject to the refund provisions discussed below.

The Utility should be authorized to collect the temporary rates upon staff's approval of an appropriate security for the potential refund and the proposed customer notice. Security should be in the form of a bond or letter of credit in the amount of $5,018. Alternatively, the Utility could establish an escrow agreement with an independent financial institution.

If the Utility chooses a bond as security, the bond should contain wording to the effect that it will be terminated only under the following conditions:

1. The Commission approves the rate increase; or,
2. If the Commission denies the increase, the Utility shall refund the amount collected that is attributable to the increase.

If the Utility chooses a letter of credit as a security, it should contain the following conditions:

1. The letter of credit is irrevocable for the period it is in effect.
2. The letter of credit will be in effect until a final Commission order is rendered, either approving or denying the rate increase.

If security is provided through an escrow agreement, the following conditions should be part of the agreement:

1. The Commission Clerk, or his or her designee, must be a signatory to the escrow agreement.
2. No monies in the escrow account may be withdrawn by the Utility without the prior written authorization of the Commission Clerk, or his or her designee.
3. The escrow account shall be an interest bearing account.
4. If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers.
5. If a refund to the customers is not required, the interest earned by the escrow account shall revert to the Utility.
6. All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times.
7. The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt.
8. This escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.
9. The account must specify by whom and on whose behalf such monies were paid.

In no instance should the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and should be borne by, the Utility. Irrespective of the form of security chosen by the Utility, an account of all monies received as a result of the rate increase should be maintained by the Utility. If a refund is ultimately required, it should be paid with interest calculated pursuant to Rule 25-30.360(4), F.A.C.

The Utility should maintain a record of the amount of the bond, and the amount of revenues that are subject to refund. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(6), F.A.C., the Utility should file reports with the Commission Clerk's office no later than the twentieth of every month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed should also indicate the status of the security being used to guarantee repayment of any potential refund.

Issue 14: Should Sunrise be required to notify the Commission, in writing, that it has adjusted its books in accordance with the Commission's decision?

Recommendation: Yes. The Utility should be required to notify the Commission, in writing, that it has adjusted its books in accordance with the Commission's decision. Sunrise should submit a letter within 90 days of the final order in this docket, confirming that the adjustments to all the applicable NARUC USOA primary accounts as shown on Schedule No. 5 have been made to the Utility's books and records. In the event the Utility needs additional time to complete the adjustments, notice should be provided within seven days prior to deadline. Upon providing good cause, staff should be given administrative authority to grant an extension of up to 60 days. In addition, the Utility should be required to maintain its books and records on a monthly basis in accordance with the NARUC USOA. (Golden, Vogel)

Staff Analysis: The Utility should be required to notify the Commission, in writing that it has adjusted its books in accordance with the Commission's decision. Schedule No. 5 reflects the accumulated plant, depreciation, CIAC, and amortization of CIAC balances as of December 31, 2014. Sunrise should submit a letter within 90 days of the final order in this docket, confirming that the adjustments to all the applicable NARUC USOA primary accounts as shown on Schedule No. 5 have been made to the Utility's books and records. In the event the Utility needs additional time to complete the adjustments, notice should be provided within seven days prior to deadline. Upon providing good cause, staff should be given administrative authority to grant an extension of up to 60 days.

In addition, as discussed in Issues 4 and 7, Rule 25-30.115, F.A.C., requires that water and wastewater utilities maintain their accounts and records in conformity with the 1996 NARUC USOA. The Utility is not currently maintaining its books and records on a monthly basis as required. The lack of properly maintained books and records proved to be a significant impediment to the audit staff, substantially increasing the work required to process the audit for this docket, as well as the audit in the Alturas SARC docket. The lack of properly maintained books and records also proved to be a significant impediment to technical staff's work on this docket as well. Further, staff believes the lack of frequent bookkeeping activities may hinder the Utility's ability to detect and respond to cash flow concerns on a more regular basis. Therefore, staff recommends that the Utility be required to maintain its books and records on a monthly basis in accordance with the NARUC USOA.

Due to the Utility's recent efforts to hire a contractual accountant to begin maintaining the books and records going forward, staff does not believe it is necessary to initiate a show cause proceeding at this time. However, staff believes the Utility should be put on notice that if the Utility's books and records are found to be out of compliance with Commission regulations in the future, the Utility may be subject to a show cause action by the Commission.

Issue 15: Should this docket be closed?

Recommendation: No. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order will be issued. The docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the Utility and approved by staff, and the Utility has provided staff with proof that the adjustments for all the applicable NARUC USOA primary accounts have been made. Also, the docket should remain open to allow staff to verify that the Utility has adjusted its customer deposit records and all deposit amounts that may be owed to customers have been properly refunded and to verify the Utility has properly refunded the rate case expenses it over-collected. Once the above actions are completed this docket will be closed administratively. (Corbari)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order will be issued. The docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the Utility and approved by staff, and the Utility has provided staff with proof that the adjustments for all the applicable NARUC USOA primary accounts have been made. Also, the docket should remain open to allow staff to verify that the Utility has adjusted its customer deposit records and all deposit amounts that may be owed to customers have been properly refunded and to verify the Utility has properly refunded the rate case expenses it over-collected. Once the above actions are completed this docket will be closed administratively.

SUNRISE UTILITIES, LLC. **SCHEDULE NO. 1-A**
TEST YEAR ENDED 12/31/14 **DOCKET NO. 140220-WU**
SCHEDULE OF WATER RATE BASE

	DESCRIPTION	BALANCE PER UTILITY	STAFF ADJUST. TO UTIL. BAL.	BALANCE PER STAFF
1.	UTILITY PLANT IN SERVICE	$124,367	($15,067)	$109,300
2.	LAND & LAND RIGHTS	0	553	553
3.	NON-USED AND USEFUL COMPONENTS	0	0	0
4.	CIAC	(5,168)	(7,225)	(12,393)
5.	ACCUMULATED DEPRECIATION	(68,952)	535	(68,417)
6.	AMORTIZATION OF CIAC	5,168	7,225	12,393
7.	WORKING CAPITAL ALLOWANCE	0	8,337	8,337
8.	WATER RATE BASE	$55,415	($5,642)	$49,773

	SUNRISE UTILITIES, LLC. TEST YEAR ENDED 12/31/14 ADJUSTMENTS TO RATE BASE	SCHEDULE NO. 1-B DOCKET NO. 140220-WU
	UTILITY PLANT IN SERVICE	
1.	To reflect appropriate plant in service per audit.	($13,767)
2.	To reflect retirements associated with 2012 and 2013 plant additions.	(1,300)
	Total	($15,067)
	LAND & LAND RIGHTS	
	To reflect appropriate land and land rights.	$553
	CIAC	
	To reflect appropriate CIAC.	($7,225)
	ACCUMULATED DEPRECIATION	
1.	To reflect accumulated depreciation per Rule 25-30.140, F.A.C.	($3,131)
2.	To reflect retirements associated with 2012 and 2013 plant additions.	1,412
3.	To reflect an averaging adjustment.	2,254
	Total	$535
	AMORTIZATION OF CIAC	
1.	To reflect appropriate amortization of CIAC.	$6,900
2.	To reflect pro forma adjustment to fully amortize CIAC in August 2015.	325
	Total	$7,225
	WORKING CAPITAL ALLOWANCE	
	To reflect 1/8 of test year O&M expenses.	$8,337

SUNRISE UTILITIES, LLC. **SCHEDULE NO. 2**
TEST YEAR ENDED 12/31/14 **DOCKET NO. 140220-WU**
SCHEDULE OF CAPITAL STRUCTURE

	CAPITAL COMPONENT	PER UTILITY	SPECIFIC ADJUST-MENTS	BALANCE BEFORE PRO RATA ADJUSTMENTS	PRO RATA ADJUST-MENTS	BALANCE PER STAFF	PERCENT OF TOTAL	COST	WEIGHTED COST
1.	COMMON STOCK	$0	$0	$0					
2.	RETAINED EARNINGS	0	0	0					
3.	PAID IN CAPITAL	0	0	0					
4.	OTHER COMMON EQUITY	0	90,000	90,000					
	TOTAL COMMON EQUITY	$0	$90,000	$90,000	($44,707)	$45,293	91.00%	8.74%	7.95%
5.	LONG TERM DEBT	$0	$0	$0	$0	$0	0.00%	0.00%	0.00%
6.	SHORT-TERM DEBT	0	0	0	0	0	0.00%	0.00%	0.00%
7.	PREFERRED STOCK	0	0	0	0	0	0.00%	0.00%	0.00%
	TOTAL DEBT	$0	$0	$0	$0	$0	0.00%		
8.	CUSTOMER DEPOSITS	$0	$4,480	$4,480	$0	$4,480	9.00%	2.00%	0.18%
9.	TOTAL	$0	$94,480	$94,480	($44,707)	$49,773	100.00%		8.13%

RANGE OF REASONABLENESS	LOW	HIGH
RETURN ON EQUITY	7.74%	9.74%
OVERALL RATE OF RETURN	7.22%	9.04%

SUNRISE UTILITIES, LLC.
TEST YEAR ENDED 12/31/14
SCHEDULE OF WATER OPERATING INCOME

SCHEDULE NO. 3-A
DOCKET NO. 140220-WU

		TEST YEAR PER UTILITY	STAFF ADJUSTMENTS	STAFF ADJUSTED TEST YEAR	ADJUST. FOR INCREASE	REVENUE REQUIREMENT
1.	**OPERATING REVENUES**	$69,416	$5,522	$74,938	$7,510 10.02%	$82,448
	OPERATING EXPENSES:					
2.	OPERATION & MAINTENANCE	$69,373	($2,676)	$66,697	$0	$66,697
3.	DEPRECIATION (NET)	0	4,508	4,508	0	4,508
4.	TAXES OTHER THAN INCOME	5,731	(1,496)	4,235	338	4,573
5.	INCOME TAXES	0	0	0	0	0
6.	**TOTAL OPERATING EXPENSES**	$75,104	$336)	$75,440	$338	$75,778
7.	**OPERATING INCOME/(LOSS)**	($5,688)		($502)		$6,670
8.	**WATER RATE BASE**	$55,415		$49,773		$49,773
9.	**RATE OF RETURN**	(10.26%)		(1.01%)		
10.	**OPERATING RATIO**					10.00%

SUNRISE UTILITIES, LLC. TEST YEAR ENDED 12/31/14 ADJUSTMENTS TO OPERATING INCOME	SCHEDULE NO. 3-B DOCKET NO. 140220-WU Page 1 of 2
OPERATING REVENUES	
1. To reflect the appropriate test year revenues.	$2,882
2. To reflect the appropriate test year miscellaneous service revenues.	2,640
Subtotal	$5,522
OPERATION AND MAINTENANCE EXPENSES	
1. Salaries and Wages - Officers (603)	
a. To reflect appropriate allocation of administration officer/owner's salary.	($2,640)
b. To reflect appropriate allocation of president's salary.	585
c. To reflect reduction in officers' salaries due to quality of service penalty.	(2,486)
	($4,541)
2. Purchased Power (615)	
a. To reflect appropriate purchased power expense and removal of late fees..	($63)
b. To reflect 9% excessive unaccounted for water adjustment.	(205)
Subtotal	($268)
3. Fuel for Power Production (616)	
To reflect propane fuel expense for emergency generator.	$219
4. Chemicals (618)	
a. To reflect appropriate chemicals expense.	$131
b. To reflect 9% excessive unaccounted for water adjustment.	(141)
Subtotal	($10)
5. Contractual Services - Billing (630)	
a. To reflect pro forma meter reading expense.	$60
b. To reflect pro forma contractual bookkeeping expense.	($3,118)
Subtotal	($3,058)
6. Contractual Services - Professional (631)	
a. To reflect pro forma contractual bookkeeping expense.	$1,670
7. Contractual Services - Testing (635)	
a. To reflect appropriate annual testing expense.	$2,340
b. To reflect pro forma 3-year amortization of triennial water tests.	1,508
c. To reflect pro forma 5-year amortization of DEP-required additional tests.	760
Subtotal	$4,608
8. Contractual Services - Other (636)	
a. To reflect appropriate contractual office manager expense.	($1,958)
b. To reflect appropriate test year contractual operator expense.	173
c. To reflect appropriate test year maintenance expense.	(6,727)
d. To reclassify meter checking expense from Alturas to Sunrise.	159
e. To reflect pro forma contractual utility service technician expense.	10,140
f. To reflect annual amortization of hydropneumatic tank inspection/cleaning.	762
Subtotal	$2,549

SUNRISE UTILITIES, LLC. TEST YEAR ENDED 12/31/14 ADJUSTMENTS TO OPERATING INCOME	SCHEDULE NO. 3-B DOCKET NO. 140220-WU Page 2 of 2
OPERATION AND MAINTENANCE EXPENSES (CONTINUED)	
9. Transportation Expense (650)	
To reflect pro forma transportation expense.	($1,274)
10. Insurance Expense (655)	
To reflect appropriate insurance expense.	($182)
11. Regulatory Commission Expense (665)	
a. To reflect 4-year amortization of rate case expense (Docket No. 110238-WU).	$344
b. To reflect 4-year amortization of rate case expense for current case ($2,648/4).	662
Subtotal	$1,006
12. Bad Debt Expense (670)	
a. To reflect appropriate bad debt expense.	($2,510)
13. Miscellaneous Expense (675)	
a. To reflect appropriate test year miscellaneous expense.	($1,371)
b. To reflect 5-year amortization of non-recurring miscellaneous operator expense.	115
c. To reflect pro forma annual FRWA membership dues.	202
d. To reflect pro forma 5-year amort. of software update, additional license, and training.	108
e. To reflect pro forma 5-year amortization of electronic bank deposit machine.	60
Subtotal	($885)
TOTAL OPERATION & MAINTENANCE ADJUSTMENTS	($2,676)
DEPRECIATION EXPENSE	
To reflect test year depreciation calculated per Rule 25-30.140, F.A.C.	$4,508
TAXES OTHER THAN INCOME	
1. To reflect appropriate test year RAFs.	$249
2. To reflect appropriate test year utility property taxes.	(1,745)
Total	($1,496)

SUNRISE UTILITIES, LLC. **SCHEDULE NO. 3-C**
TEST YEAR ENDED 12/31/14 **DOCKET NO. 140220-WU**
ANALYSIS OF WATER OPERATION AND MAINTENANCE EXPENSE

	TOTAL PER UTILITY	STAFF ADJUST-MENTS	TOTAL PER STAFF
(601) SALARIES AND WAGES - EMPLOYEES	$0	$0	$0
(603) SALARIES AND WAGES - OFFICERS	12,000	(4,541)	7,459
(604) EMPLOYEE PENSIONS AND BENEFITS	0	0	0
(610) PURCHASED WATER	0	0	0
(615) PURCHASED POWER	2,340	(268)	2,072
(616) FUEL FOR POWER PRODUCTION	0	219	219
(618) CHEMICALS	1,431	(10)	1,421
(620) MATERIALS AND SUPPLIES	0	0	0
(630) CONTRACTUAL SERVICES - BILLING	9,802	(3,058)	6,744
(631) CONTRACTUAL SERVICES - PROFESSIONAL	400	1,670	2,070
(635) CONTRACTUAL SERVICES - TESTING	0	4,608	4,608
(636) CONTRACTUAL SERVICES - OTHER	29,173	2,549	31,722
(640) RENTS	0	0	0
(650) TRANSPORTATION EXPENSE	1,976	(1,274)	702
(655) INSURANCE EXPENSE	2,010	(182)	1,828
(665) REGULATORY COMMISSION EXPENSE	0	1,006	1,006
(670) BAD DEBT EXPENSE	3,899	(2,510)	1,389
(675) MISCELLANEOUS EXPENSE	6,342	(885)	5,457
	$69,373	($2,676)	$66,697

SUNRISE UTILITIES, LLC. **SCHEDULE NO. 4**
TEST YEAR ENDED 12/31/14 **DOCKET NO. 140220-WU**
MONTHLY WATER RATES

	UTILITY CURRENT RATES	STAFF RECOMMENDED RATES	4 YEAR RATE REDUCTION
Residential and General Service			
Base Facility Charge by Meter Size			
5/8"X3/4"	$9.07	$10.01	$0.10
3/4"	$13.61	$15.02	$0.14
1"	$22.68	$25.03	$0.24
1-1/2"	$45.35	$50.05	$0.48
2"	$72.56	$80.08	$0.77
3"	$145.12	$160.16	$1.54
4"	$226.75	$250.25	$2.40
6"	$453.50	$500.50	$4.80
Charge per 1,000 Gallons - Residential			
0-5,000 gallons	$2.89	$3.19	$0.03
5,001-10,000 gallons	$3.18	$3.51	$0.03
Over 10,000 gallons	$6.35	$7.01	$0.07
Charge per 1,000 gallons - General Service	$3.29	$3.63	$0.03 12
Typical Residential 5/8" x 3/4" Meter Bill Comparison			
3,000 Gallons	$17.74	$19.58	
5,000 Gallons	$23.52	$25.96	
10,000 Gallons	$39.42	$43.51	

SUNRISE UTILITIES, LLC. **SCHEDULE NO. 5**

TEST YEAR ENDED 12/31/2014 **DOCKET NO. 140220-WU**

SCHEDULE OF WATER PLANT, DEPRECIATION, CIAC, & CIAC AMORTIZATION BALANCES

ACCT NO.	DEPR. RATE PER RULE 25-30.140	DESCRIPTION	UPIS 12/31/2014 (DEBIT)	ACCUM. DEPR. 12/31/2014 (CREDIT)*
301	2.50%	ORGANIZATION	$750	$285
303	0.00%	LAND AND LAND RIGHTS (NON-DEPRECIABLE)	553	0
304	3.70%	STRUCTURES AND IMPROVEMENTS	5,412	3,408
307	3.70%	WELLS AND SPRINGS	16,972	14,676
309	3.13%	SUPPLY MAINS	649	(273)
310	5.88%	POWER GENERATION EQUIPMENT	15,070	7,104
311	5.88%	PUMPING EQUIPMENT	17,377	4,341
320	5.88%	WATER TREATMENT EQUIPMENT	4,055	4,055
330	3.03%	DISTRIBUTION RESERVOIRS AND STANDPIPES	21,485	15,903
331	2.63%	TRANSMISSION AND DISTRIBUTION MAINS	12,393	8,253
334	5.88%	METERS AND METER INSTALLATIONS	12,257	10,408
340	6.67%	OFFICE FURNITURE AND EQUIPMENT	494	123
348	10.00%	OTHER TANGIBLE PLANT	2,388	2,388
		TOTAL INCLUDING LAND	$109,855	$70,671

		CIAC AMORT. 12/31/2014 (DEBIT)*	CIAC 12/31/2014 (CREDIT)
		$12,068	$12,393

*The accumulated depreciation balance excludes the staff-recommended averaging adjustment and the CIAC amortization balance excludes the staff-recommended $325 pro forma adjustment that are only used for ratesetting purposes and should not be reflected on the Utility's books.

Item 9

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 18, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (M. Watts)
Division of Accounting and Finance (Frank, Norris)
Division of Economics (Thompson)
Office of the General Counsel (Villafrate)

RE: Docket No. 150012-WU – Application for transfer of Certificate 390-W from County-Wide Utility Co., Inc. to Southwest Ocala Utility, Inc. in Marion County.

AGENDA: 03/01/16 – Regular Agenda – Proposed Agency Action for Issues 2 and 3 – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brisé

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On January 2, 2015, County-Wide Utility Co., Inc. (County-Wide or seller) filed an application for the transfer of Certificate No. 390-W to Southwest Ocala Utility, Inc. (SOU, Utility, or buyer) in Marion County. County-Wide is a Class C Utility which only provides water service. The service area is located in the St. Johns River Water Management District (SJRWMD), and is not in a water use caution area. According to County-Wide's 2014 Annual Report, the Utility serves 539 residential customers, three general service customers, and had total revenues of $139,624.

Certificate No. 390-W was originally granted in 1983 under the name of Bahia Oaks, Inc. d/b/a County-Wide Utility Company, Inc.[1] In 1997, the Commission extended County-Wide's territory to include Units Three, Four, and Five of the Bahia Oaks Subdivision.[2] Water rates for the Utility were last approved in a 2007 staff assisted rate case.[3]

This recommendation addresses the transfer of County-Wide's water system under Certificate No. 390-W, the net book value of the water system at the time of transfer, and whether an acquisition adjustment should be approved. The Commission has jurisdiction pursuant to Section 367.071, Florida Statutes (F.S.).

[1]Order No. 11868, issued April 21, 1983, in Docket No. 810369-WU, *In re: Application of Bahia Oaks, Inc. d/b/a County-Wide Utility Company, Inc. for a certificate to operate a water utility in Marion County.*
[2]Order No. PSC-97-0578-FOF-WU, issued May 20, 1997, in Docket No. 970085-WU, *In re: Application for amendment of Certificate No. 390-W to extend service territory to include unit numbers 3, 4, and 5 of Bahia Oaks Subdivision in Marion County by Countywide Utility Company.*
[3]Order No. PSC-07-0604-PAA-WU, issued July 30, 2007, in Docket No. 050862-WU, *In re: Application for staff-assisted rate case in Marion County by County-Wide Utility Co., Inc.*

Discussion of Issues

Issue 1: Should the Commission approve the transfer of County-Wide Utility Co., Inc.'s water system and Certificate No. 390-W to Southwest Ocala Utility, Inc.?

Recommendation: Yes. The transfer of County-Wide's water system and the transfer of Certificate No. 390-W to SOU is in the public interest and should be approved effective the date of the Commission's vote. The resultant order should serve as SOU's certificate and should be retained by the Utility. The existing rates and charges should remain in effect until a change is authorized by the Commission in a subsequent proceeding. The tariffs reflecting the transfer should be effective for services rendered or connections made on or after the stamped approval date on the tariffs pursuant to Rule 25-30.475, Florida Administrative Code (F.A.C.) SOU should be responsible for filing the Utility's annual reports and paying RAFs for 2015 and all future years. (Frank, M. Watts, Thompson)

Staff Analysis: On January 2, 2015, County-Wide filed an application for approval of the transfer of its water system and Certificate No. 390-W to SOU. The application is in compliance with the governing Statute, Section 367.071, F.S., and Administrative Rules concerning applications for transfer of certificates. However, as discussed below, there is disagreement between staff and the Utility over the appropriate purchase price.

Noticing, Territory, and Land Ownership

The application contains proof of compliance with the noticing provisions set forth in Section 367.071, F.S., and Rule 25-30.030, F.A.C. No objections to the transfer were filed with the Commission and the time for doing so has expired. The application contains a description of the Utility's water service territory, which is appended to this recommendation as Attachment A. As the Utility is a reseller of bulk water purchased from the City of Ocala, it has no water treatment facilities. Therefore, no proof of land ownership pursuant to Rule 25-30.037(2)(s), F.A.C., is required.

Purchase Agreement and Financing

Pursuant to Rule 25-30.037(2)(i) and (j), F.A.C., the application must contain a statement regarding financing and a copy of the Purchase Agreement, which includes the purchase price, terms of payment, and a list of the assets purchased. According to the application, Dirk and Donna Leeward own 100 percent of Brick City Management, LLC (BCM) which manages and owns 100 percent of Southwest Ocala Utility (SOU). According to the application and subsequently filed support documents, on July 19, 2012, Mr. Leeward purchased, at a discount, an outstanding note from BBVA Compass Bank (Compass Bank) that County-Wide owed Compass Bank. The note was comprised of principal, accrued interest, costs, and fees totaling $1,067,747. The amount Mr. Leeward paid for the note is unknown. Subsequent to purchasing the note, Mr. Leeward foreclosed on County-Wide on March 4, 2013. On April 8, 2013, Mr. Leeward acquired the Utility assets at a public foreclosure auction for a total of $301, which was comprised of the winning bid amount and associated documentary stamps. On January 1, 2014, the assets were transferred to SOU. Staff believes that the amount paid Compass Bank for the outstanding note should be included in determining the purchase price of the Utility. Staff made several attempts to obtain the information including stating that the information could be filed under a confidential request, but Mr. Leeward did not provide the requested information.

On November 19, 2015, the buyer's attorney, Mr. Marshall Deterding, submitted a letter outlining the Utility's concerns with staff's position on the purchase price, Net Book Value (NBV), and application of an acquisition adjustment. In the letter, Mr. Deterding states that Mr. Leeward is unable to provide information regarding the amount paid to acquire the mortgage note from the bank because there is a non-disclosure and confidentiality agreement attached to the transaction between the buyer and the bank. Furthermore, the Utility believes that the discounted amount paid for the mortgage note is irrelevant to the purchase price and believes that staff should consider the full amount of the outstanding note as the purchase price. In support of this position, Mr. Deterding notes that the Marion County Circuit Court established that a note valuing approximately $1,007,000 was relinquished for County-Wide's assets in the Summary Final Judgment of Foreclosure, and claims that the Commission does not have jurisdiction to disregard the Court Order.

However, the assets were not acquired when Mr. Leeward foreclosed on County-Wide. As stated above, the assets were acquired at the foreclosure auction. As a result, staff believes the foreclosure auction is the final transaction which led to the acquisition of the assets and that the court-ordered amount for the mortgage note is irrelevant.

Staff recognizes that in addition to the bid amount and associated fees, Mr. Leeward paid an undisclosed amount for the note which served to ultimately obtain the assets. Staff believes that for this specific case it is appropriate to consider all compensation paid to acquire the assets, which would include the amount actually paid for the mortgage note. However, staff does not believe that it is appropriate to consider the entire amount of the $1,007,000 mortgage note, because it does not reflect the actual amount paid to acquire the assets and it would be considered irrelevant for any other buyer who may have acquired the assets at the foreclosure auction. Staff addresses the impact of the utility's non-disclosure of the purchase price in issue 3.

Staff has calculated the resulting purchase price to be $227, which is the bid amount of $101, and documentary stamps of $200 less the value of the unregulated wastewater system, that was included in the auctioned property. Staff has allocated $74 to the unregulated wastewater system based on the suggested allocation of the regulated and unregulated assets provided by the Utility in response to deficiencies to its transfer application.

According to the application, there are no customer deposits, guaranteed revenue contracts, developer agreements, customer advances, or leases of County-Wide that must be disposed of with regard to the transfer.

Facility Description and Compliance

SOU's water system is a consecutive system composed of water mains, as listed in Table 1-1 below, and nine fire hydrants. A consecutive system provides treated water purchased from another entity. Therefore, the City of Ocala is responsible for ensuring the water meets primary and secondary water quality standards. On November 13, 2013, the Florida Department of Environmental Protection (DEP) conducted a Sanitary Survey, and found the Utility was found to be in compliance with its rules and regulations.

Table 1-1
Southwest Ocala Utility, Inc. Water Mains

Material	Diameter Pipe (inches)	Length (linear feet)
PVC	1	100
PVC	2	5,630
PVC	2 1/2	4,300
PVC	4	4,360
PVC	6	750
PVC	8	750
PVC	12	100

Source: County-Wide Utility Co., Inc. 2014 Annual Report

Technical and Financial Ability

Pursuant to Rule 25-30.037(1)(l) and (m), F.A.C., the application contains statements describing the technical and financial ability of the applicant to provide service to the proposed service area. According to the application, Mr. Leeward has been the general manager of County-Wide since 1986 and has extensive knowledge of the operations and management of the system. As referenced in the transfer application, SOU will fulfill the commitments, obligations and representations of the seller with regards to utility matters.

Staff reviewed the financial statements of BCM, sole manager and owner of SOU. According to the application, BCM has provided working capital funding to the Utility and will ensure the availability of any necessary funds for future capital needs. Based on the above, SOU has demonstrated the technical and financial ability to provide service to the existing service territory.

Rates and Charges

The Utility's rates and charges were last approved in a staff-assisted rate case in 2007.[4] The rates were subsequently amended to reflect a four-year rate reduction required by Section 367.0816, F.S., in 2011 and numerous price indexes. The Utility's existing rates are shown on Schedule No. 1. Rule 25-9.044(1), F.A.C., provides that, in the case of a change of ownership or control of a utility, the rates, classifications, and regulations of the former owner must continue unless authorized to change by this Commission. Therefore, staff recommends that the Utility's existing rates and charges remain in effect until a change is authorized by this Commission in a subsequent proceeding.

Regulatory Assessment Fees (RAFs) and Annual Reports

Staff has verified that the Utility is current on the filing of annual reports and RAFs through December 31, 2014. SOU will be responsible for filing the Utility's annual reports and paying RAFs for 2015 and all future years.

[4]Order No. PSC-07-0604-PAA-WU, issued July 30, 2007, in Docket No. 050862-WU, *In re: Application for staff-assisted rate case in Marion County by County-Wide Utility Co., Inc.*

Conclusion

The transfer of County-Wide's water system and the transfer of Certificate No. 390-W to SOU is in the public interest and should be approved effective the date of the Commission's vote. The resultant order should serve as SOU's certificate and should be retained by the Utility. The existing rates and charges should remain in effect until a change is authorized by the Commission in a subsequent proceeding. The tariffs reflecting the transfer should be effective for services rendered or connections made on or after the stamped approval date on the tariffs pursuant to Rule 25-30.475, F.A.C. SOU should be responsible for filing the Utility's annual reports and paying RAFs for 2015 and all future years.

Issue 2: What is the appropriate net book value for the SOU water system for transfer purposes?

Recommendation: The net book value of the water system for transfer purposes is $760,002, as of January 1, 2014. Within 90 days of the date of the final order, SOU should be required to notify the Commission in writing, that it has adjusted its books in accordance with the Commission's decision. The adjustments should be reflected in SOU's 2015 Annual Report when filed. (Frank, Norris, Watts)

Staff Analysis: Rate base was last established for the Utility as of December 31, 2005.[5] The purpose of establishing net book value (NBV) for transfers is to determine whether an acquisition adjustment should be approved. The NBV does not include normal ratemaking adjustments for used and useful plant or working capital. The Utility's NBV has been updated to reflect balances as of January 1, 2014. Staff's recommended NBV, as described below, as shown on Schedule No. 2.

Utility Plant in Service (UPIS)

The Utility's general ledger reflected a UPIS balance of $219,537, as of January 1, 2014. Staff reviewed UPIS additions since the last rate case proceeding and as a result has increased UPIS by $7,177.

The interconnection with the City of Ocala was disallowed from rate base during the Utility's last rate case as being imprudent since it was not deemed necessary to serve the Utility's current (at the time) customers. Since that time, the water treatment plant has been decommissioned and the interconnection is the only source of water for all customers. For any party purchasing the Utility now, the interconnection is a vital part of the system, required to serve customers, and should be included in rate base. This results in an increase of $684,693 to UPIS.

In total, UPIS should be increased by $691,870 ($7,177 + $684,693) to reflect a UPIS balance of $911,407, as of January 1, 2014.

Land

The Utility's general ledger reflected a land balance of $2,815, as of January 1, 2014. In Order No., PSC-07-0604-PAA-WU, issued July 30, 2007, the Commission established the value of the land to be $2,815. There have been no additions to land purchased since that order was issued. Therefore, staff recommends land of $2,815, as of January 1, 2014.

Accumulated Depreciation

The Utility's general ledger reflected an accumulated depreciation balance of $93,858, as of January 1, 2014. Not including the recognition of the interconnection, staff calculated the appropriate accumulated depreciation balance to be $93,655. As a result, accumulated depreciation should be decreased by $203.

[5]Order No. PSC-07-0604-PAA-WU, issued July 30, 2007, in Docket No. 050862-WU, *In re: Application for a staff-assisted rate case in Marion County by County-Wide Utility Co., Inc.*

Accounting Standards Codification (ASC) No. 980-340-35-2 states that if a regulator allows recovery through rates of costs previously excluded from allowable costs, that action shall result in recognition of a new asset. As such, staff believes that the previously disallowed interconnection should be recognized as a new asset and placed into rate base at the undepreciated original cost. However, staff also believes an adjustment should be included to recognize accumulated depreciation associated with Contributions in Aid of Construction (CIAC) and Allowance for Funds Prudently Invested (AFPI) charges previously collected in association with the interconnection. Staff calculated this adjustment by taking the ratio of CIAC and AFPI collected (eight lots added in 2008), to the total plant balance of the interconnection and applying that percentage (2.8 percent) to the accumulated depreciation balances associated with the interconnection had it been recognized when it was originally placed into service. This results in an increase of $3,742 to accumulated depreciation.

In total, accumulated depreciation should be increased by $3,539 ($203 - $3,742) to reflect an accumulated depreciation balance of $97,397, as of January 1, 2014.

Contributions-in-Aid-of-Construction (CIAC) and Accumulated Amortization of CIAC

As of January 1, 2014, the Utility's general ledger reflected a CIAC balance of $87,008; and an accumulated amortization of CIAC balance of $40,982. Staff increased CIAC by $10,839 based on audited cash receipts since the Commission approved beginning balances from its last rate case. Using a composite rate, staff also calculated and increased accumulated amortization of CIAC by $42. Therefore, staff recommends a CIAC balance of $97,847 and an accumulated amortization of CIAC balance of $41,024, as of January 1, 2014.

Net Book Value

The Utility's general ledger reflected a NBV of $82,468. Based on the adjustments described above, staff recommends that the NBV for the Utility's water system, as of January 1, 2014, is $760,002 ($82,468 + $677,534). Staff's recommended NBV and the National Association of Regulatory Utility Commissioners, Uniform System of Accounts (NARUC USOA) balances for UPIS and accumulated depreciation are shown on Schedule No. 2, as of January 1, 2014.

Conclusion

Based on the above, staff recommends that the NBV of the water system for transfer purposes is $760,002, as of January 1, 2014. Within 90 days of the date of the final order, SOU should be required to notify the Commission in writing, that it has adjusted its books in accordance with the Commission's decision. The adjustments should be reflected in SOU's 2015 Annual Report when filed.

Issue 3: Should an acquisition adjustment be recognized for rate-making purposes?

Recommendation: Yes. Pursuant to Rule 25-30.0371, F.A.C., a negative acquisition adjustment of $607,775 should be recognized for rate-making purposes. Beginning with the date of the issuance of the order approving the transfer, 50 percent of the negative acquisition, which is $303,888, should be amortized over a 7-year period and the remaining 50 percent should be amortized over the remaining 33-year life of the assets. (Frank, Norris)

Staff Analysis: An acquisition adjustment results when the purchase price differs from the original cost of the assets (net book value) adjusted to the time of the acquisition. Pursuant to Rule 25-30.0371(3), F.A.C., if the purchase price is equal to or less than 80 percent of net book value, a negative acquisition adjustment shall be included in rate base and will be equal to 80 percent of net book value less the purchase price. Pursuant to Rule 25-30.0371(4)(b)2., F.A.C., in setting the amortization period for an acquisition adjustment, if the purchase price is equal to or less than 50 percent of the net book value, then 50 percent of the negative acquisition adjustment is amortized over a 7-year period and 50 percent amortized over the remaining life of the assets, beginning with the date of the issuance of the order approving the transfer of assets. Staff calculated the remaining life of the applicable water assets to be 33 years. The calculation of the acquisition adjustment is shown below in table 3-1.

Table 3-1
Calculation of Negative Acquisition Adjustment

Net Book Value as of January 1, 2014	$760,002
80 % of Net Book value	$608,002
Purchase Price	$227
Negative Acquisition Adjustment	$607,775

Staff recommends that, pursuant to Rule 25-30.0371, F.A.C., a negative acquisition adjustment of $607,775 shall be recognized for rate-making purposes, as of January 1, 2014. Beginning with the date of the issuance of the order approving the transfer, 50 percent of the negative acquisition adjustment, which is $303,888 shall be amortized over a 7-year period and the remaining 50 percent shall be amortized over the 33-year remaining life of the assets.

Issue 4: Should this docket be closed?

Recommendation: Yes. If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the order, a consummating order should be issued and the docket should be closed administratively after SOU has provided proof that its general ledgers have been updated to reflect the Commission-approved balances as of January 1, 2014. (Villafrate)

Staff Analysis: If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the order, a consummating order should be issued and the docket should be closed administratively after SOU has provided proof that its general ledgers have been updated to reflect the Commission-approved balances as of January 1, 2014.

SOUTHWEST OCALA UTILITY, INC. - WATER

MARION COUNTY

Township 16 South, Range 21 East

Section 4

The Southwest ¼

Less and except that portion of the Northeast ¼ of said Southwest ¼ of said Section 4 lying North and West of State Road 200

and

Less and except that portion of the Northeast ¼ of said Southeast ¼ of the Southwest ¼ of said Section 4 lying North and West of State Road 200.

Section 5

The East ¾ of the South ½ of the Southeast ¼.

Section 8

That portion of the Northeast ¼ lying North and West of State Road 200. Except: Beginning at the intersection of the South boundary of the Northeast ¼ and the Northerly right-of-way of State Road 200; thence North 89° 53' 23" West a distance of 1,458.52 feet; thence North 00° 00' 34" East a distance of 665.08 feet; thence North 89° 53' 23" East a distance of 1,326.73 feet; thence South 69° 21' 33" East a distance of 557.40 feet; thence Southwesterly along the Northwestern right-of-way line of State Road 200 to the POINT OF BEGINNING.

Section 9

That portion of the Northwest ¼, lying North and West of State Road 200

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Southwest Ocala Utility, Inc.
pursuant to
Certificate Number 390-W

to provide water service in Marion County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

Order Number	Date Issued	Docket Number	Filing Type
11868	04/21/83	810369-W	Grandfather Certificate
PSC-97-0578-FOF-WU	05/20/97	970085-WU	Amendment
PSC-03-0792-FOF-WU	07/03/93	030453-WU	Name Correction
*	*	150012-WU	Transfer

***Order Numbers and dates to be provided at time of issuance**

Southwest Ocala Utility, Inc.
Monthly Water Rates

Residential and General Service

Base Facility Charge by Meter Size	
5/8" x 3/4"	$10.18
3/4"	$15.27
1"	$25.45
1 1/2"	$50.89
2"	$81.43
3"	$162.86
4"	$254.49
6"	$508.94
Charge per 1,000 gallons – Residential	
0-10,000 gallons	$2.55
10,001-20,000 gallons	$3.19
Over 20,000 gallons	$3.81
Charge Per 1,000 gallons – General Service	$2.70

Private Fire Protection

Base Facility Charge by Meter Size	
4"	$21.21
6"	$42.41
8"	$67.87
10"	$97.56

Initial Customer Deposits

Residential Service and General Service

5/8" x 3/4"	$50.00
3/4"	$75.00
1"	$125.00
Over 1"	2 times the average estimated bill

Miscellaneous Service Charges

	Business Hours	After Hours
Initial Connection Charge	$21.00	N/A
Normal Reconnection Charge	$21.00	$42.00
Violation Reconnection Charge	$21.00	$42.00
Premises Visit Charge (in lieu of disconnection)	$21.00	$42.00
Late Payment Charge	$5.00	

Service Availability Charges

Main Extension Charge
Residential – Per ERC $1,540.00

Allowance for Funds Prudently Invested – Bahia Oaks
Transmission and Distribution
Calculation of Carrying Cost per ERC by Month:

	2006	2007	2008	2009	2010
January	$28	$360	$718	$1,103	$1,518
February	$55	$389	$750	$1,137	$1,555
March	$83	$419	$781	$1,172	$1,593
April	$110	$449	$813	$1,206	$1,630
May	$138	$478	$845	$1,241	$1,667
June	$165	$508	$877	$1,275	$1,704
July	$193	$538	$909	$1,309	$1,741
August	$220	$567	$941	$1,344	$1,778
September	$248	$597	$973	$1,378	$1,815
October	$275	$626	$1,005	$1,413	$1,852
November	$303	$656	$1,037	$1,447	$1,889
December	$330	$686	$1,069	$1,481	$1,926

1. The amounts indicated above are per ERC. (ERC=350)
2. The number of remaining ERCs is 422 as of 1/1/2006.
3. If the number of the remaining ERCs has not connected by December 31, 2010, the maximum charge of $1,926 remains in effect after December 31, 2008.
4. When the number of remaining ERCs have connected, the charge will cease.

Southwest Ocala Utility, Inc. Water System Schedule

Water System

Schedule of Net Book Value as of January 1, 2014

Description	Balance Per Utility	Adjustments*		Staff Recommendation
Utility Plant in Service	$219,537	$691,870	A	$911,407
Land & Land Rights	2,815	0		2,815
Accumulated Depreciation	(93,858)	(3,539)	B	(97,397)
CIAC	(87,008)	(10,839)	C	(97,847)
Amortization of CIAC	40,982	42	D	41,024
Total	$82,468	$677,534		$760,002

* Adjustments are shown on the following page, Schedule No. 2, page 2 of 3.

Explanation of Staff's Recommended Adjustments to Net Book Value as of January 1, 2014 Water System

Explanation	Amount
A. Utility Plant In Service	
I. To reflect appropriate amount of utility plant in service.	$7,177
II. To reflect inclusion of interconnection.	684,693
Total	$691,870
B. Accumulated Depreciation	
I. To reflect appropriate amount of accumulated depreciation.	$203
II. To reflect inclusion of interconnection.	($3,742)
Total	($3,539)
C. Contributions-in-Aid-of-Construction (CIAC)	
I. To reflect appropriate amount of accumulated depreciation.	($10,839)
D. Accumulated Amortization of CIAC	
I. To reflect appropriate amount of accumulated amortization of CIAC.	$42
Total Adjustments to Net Book Value as of December 31, 2013.	$677,534

Southwest Ocala Utility, Inc.
Water System

Schedule of Staff Recommended Account Balances as of January 1, 2014

Account No.	Description	UPIS	Accumulated Depreciation
331	Transmission & Distribution Mains	$813,212	$(59,989)
334	Meters & Meter Installations	49,545	(32,598)
335	Hydrants	22,692	(577)
336	Backflow Prevention Devices	15,882	(3,527)
339	Other Plant & Misc.	10,076	(706)
340	Office Furniture & Equipment	0	0
	Total	$911,407	($97,397)

Item 10

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 18, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (P. Buys)
Division of Economics (Hudson, Thompson)
Office of the General Counsel (Mapp)

RE: Docket No. 150230-WU – Application for amendment of Certificate of Authorization No. 247-W, to extend water service area to include land in Seminole County, by Sanlando Utilities Corporation.

AGENDA: 03/01/16 – Regular Agenda – Proposed Agency Action for Issue 2, Tariff Filing for Issue 3 – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 03/27/16 – Statutory deadline for rule waiver
05/03/16 – Tariff deadline waived

SPECIAL INSTRUCTIONS: None

Case Background

On October 26, 2015, Sanlando Utilities Corporation (Sanlando or Utility) filed an application with the Florida Public Service Commission (Commission) to amend Certificate No. 247-W to add territory in Seminole County. The Utility plans to extend its service territory in order to provide water service to the Myrtle Lake Hills subdivision, which has 116 lots (5 of which are vacant).

Sanlando's original water certificate was granted in 1976. The Utility's territory has been amended 12 times and has had 4 territory deletions. There have been four transfers of majority control for this Utility. The Commission has jurisdiction pursuant to sections 120.542 and 367.045, Florida Statues (F.S).

Discussion of Issues

Issue 1: Should the Commission approve Sanlando Utilities Corporation's application for amendment of Certificate No. 247-W to extend its water territory in Seminole County?

Recommendation: Yes. It is in the public interest to amend certificate No. 247-W to include the territory as described in Attachment A, effective the date of the Commission's vote. The resultant order should serve as Sanlando's amended certificate and should be retained by the Utility. The Utility should charge the customers in the territory added herein the rates and charges contained in its current tariff until a change is authorized by the Commission in a subsequent proceeding. (P. Buys)

Staff Analysis: The Utility's application to amend its authorized service territory is in compliance with the governing statue, Section 367.045, F.S., and Rule 25-30.036, Florida Administrative Code (F.A.C.), Application for Amendment to Certificate of Authorization to Extend or Delete Service Area. The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, F.A.C, Notice of Application and of Customer Meeting. No objections to the application have been received and the time for filing such has expired. The application contains a warranty deed, evidence that the Utility owns the land upon which the Utility facilities are located. Adequate service territory maps and territory descriptions have also been provided.

The proposed service territory is intended to serve 116 lots in the Myrtle Lake Hills subdivision adjacent to the Utility's existing service area. The residents of the subdivision are experiencing deteriorating water quality from their individual wells, such as high iron content and wells drying up with limited areas to drill new wells. Sanlando already serves ten customers in the subdivision as a result of Dockets Nos.: 040384-WS and 080644-WS. Docket No. 040384-WS was an amendment to extend its water territory because Sanlando was serving outside its service area. There was a settlement agreement with Seminole County, which included eight residents of the Myrtle Lake Hills subdivision for Sanlando to serve. Docket No. 080644-WS was a quick take amendment in which two residents of the subdivision had wells that failed. The residents of the Myrtle Lake Hills subdivision developed a survey and provided Sanlando with the survey responses. Out of the 99 survey responses, 59 residents have expressed that they support the construction of the water system and wish to become customers of Sanlando. Of the same survey responses, 31 residents expressed that they support the construction and wish to become a customer of Sanlando at a later date. Nine residents did not support the construction and do not wish to become a customer of the Utility. Sanlando indicated to the residents that it is not mandatory to become a customer of the Utility.

In addition to the survey responses, there is one resident who spoke with Commission staff and expressed that she supported the construction and wishes to become a customer of Sanlando as soon as possible. This same resident also provided written comments on February 10, 2016, supporting the amendment request. Included in her comments is an explanation of Myrtle Lake Hills groundwater quality prepared by an engineer with the Florida Rural Water Association and lab results of the water from her well. The lab results show iron is at 7.00 milligram per liter (mg/L) when Florida Department of Environmental Protection's (DEP) maximum contaminant

level is 0.3 mg/L. On January 14, 2016, another resident of the subdivision provided the Commission with comments expressing his approval of the amendment request.

The residents of the Myrtle Lake Hills subdivision will be charged a main extension charge of $5,526, plus a plant capacity fee of $225 and a meter fee of $150 at the time when service is requested. The plant capacity fee and meter fee are consistent with the Utility's current tariff. The main extension charge is addressed in Issue 3.

The Utility was granted a rate increase in 2015[1] and at that time, the Commission found the overall quality of service of Sanlando to be satisfactory. Based upon staff's review of the financial information provided in this docket, the Utility's financial ability to operate a utility has not diminished since that time. The Utility has filed its 2014 Annual Report and is current with the payment of its 2015 Regulatory Assessment Fees. The estimated additional water demand for the subdivision represents less than 1 percent of the current flows and the water treatment plant has sufficient capacity to support the extra flows. According to the application, the provision of water services in the proposed service territory is consistent with the Seminole County Comprehensive Plan and there are no outstanding Consent Orders or Notices of Violation from DEP. Therefore, staff recommends that Sanlando has the financial and technical ability to service the amended territory.

Conclusion

Based on the information above, staff recommends it is in the public interest to amend certificate No. 247-W to include the territory as described in Attachment A, effective the date of the Commission's vote. The resultant order should serve as Sanlando's amended certificates and should be retained by the Utility. The Utility should charge the customers in the territory added herein the rates and charges contained in its current tariffs until a change is authorized by the Commission in a subsequent proceeding.

[1]Order No. PSC-15-0233-PAA-WS, issued June 3, 2015, in Docket No. 140060-WS, *In re: Application for increase in water and wastewater rates in Seminole County by Sanlando Utilities Corporation.*

Issue 2: Should the Commission approve Sanlando Utilities Corporations' request for waiver of Rule 25-30.565, Florida Administrative Code, Application for Approval of New or Revised Service Availability Policy or Charges?

Recommendation: Yes. If Issue 1 is approved, the Commission should approve Sanlando Utilities Corporation's Petition for waiver of Rule 25-30.565, F.A.C. (Mapp)

Staff Analysis: On December 28, 2015, Sanlando filed a Petition seeking a waiver of Rule 25-30.565, F.A.C. The waiver is sought in connection with Sanlando's Petition to amend its authorized service territory. Sanlando currently serves 10,172 water customers in Seminole County.[2] If Issue 1 is approved, Sanlando's service territory will include an additional 111 existing single family homes, and 5 vacant single family home lots.

Pursuant to Section 120.542(6), F.S., notice of the petition for variance or waiver was published in the Florida Administrative Register on January 7, 2016. No written comments were received, and the time for such has expired.

Section 120.542(2), F.S., authorizes the Commission to grant variances or waivers from agency rules where the person subject to the rule has demonstrated that the purpose of the underlying statute will be or has been achieved by other means, and strict application of the rule would cause the person substantial hardship or would violate principles of fairness. "Substantial hardship" as defined in the statute means demonstrated economic, technological, legal, or other hardship. "Principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

The purpose of the underlying statute, Section 367.101(1), F.S., is to ensure that the Commission sets just and reasonable charges and conditions for service availability. A waiver of Rule 25-30.565, F.A.C., in the instant case will not prevent the Commission from meeting its statutory requirements under Section 367.101(1), F.S.

In its petition, Sanlando is not seeking to implement a service availability charge on the Utility's entire current customer base. The cost of construction of water lines and soft costs associated with the Commission proceeding, such as permitting costs and legal expenses, will be reimbursed by the 116 lots to be added to the system if Issue 1 is approved. The Utility's remaining 10,172 existing customers and any future customers of Sanlando added to the system outside this proceeding would remain unaffected. As explained in Issue 3, Sanlando has provided staff with the preliminary costs of the proposed main extension to serve the additional 116 lots, allowing staff to calculate a just and reasonable charge for the new customers to be added to the system, satisfying the purpose of Section 367.101(1), F.S.

Additionally, staff believes that Sanlando has demonstrated that application of the rule would create a substantial hardship and violate the principles of fairness. Sanlando asserts that application of the rule would create a substantial hardship to the Utility and its customers due to

[2]Order No. PSC-15-0233-PAA-WS, issued June 3, 2015, in Docket No. 140060-WS, *In re: Application for increase in water and wastewater rates in Seminole County by Sanlando Utilities Corporation.*

the substantial documentation required by the rule. The customers to be added to the system if Issue 1 is approved would only account for 1 percent of Sanlando's customer base. However, if the Utility were required to fulfill the filing requirements within Rule 25-30.565, F.A.C., the cost to satisfy the rule would reach $10,000. Sanlando asserts, and staff agrees that this would place a financial burden on the Utility's customers. Staff believes that the strict application of Rule 25-30.565, F.AC., in the instant docket would create a substantial hardship and violate the principles of fairness.

Conclusion

Based on the foregoing, staff believes that Sanlando has demonstrated that the purpose of the underlying statue will be achieved and that application of Rule 25-30.565, F.A.C., in the instant docket would both create a substantial hardship and violate the principles of fairness. Therefore, staff recommends that the requested waiver of Rule 25-30.565, F.A.C., be granted.

Issue 3: Should Sanlando Utilities Corporation's request to collect a main extension charge of $5,526 per lot from the 116 property owners in the Myrtle Lake Hills subdivision be approved?

Recommendation: Yes. Sanlando should be authorized to collect a water main extension charge of $5,526 per lot from the 116 property owners in the Myrtle Lake Hills subdivision. The recommended charge is reasonable and consistent with the guidelines set forth in Rule 25-30.580, F.A.C., and should be approved. The approved charge should be effective for service rendered on or after the stamped approval date of the tariff, pursuant to Rule 25-30.475, F.A.C. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice. (Thompson)

Staff Analysis: In its filing, Sanlando proposed a water main extension charge of $5,526 per lot for the 116 property owners in the Myrtle Lake Hills subdivision. The Utility does not currently have a specific water main extension charge; however, the Utility's service availability policy provides that customers should pay for the cost of main extensions, consistent with Rule 25-30.580, F.A.C. In support of the Utility's main extension charge for the Myrtle Lake Hills subdivision, the Utility provided the preliminary cost of the proposed main extension to serve the 116 lots. The cost estimate, totaling $641,000, includes the projected construction costs, engineering design, permitting and bidding, legal expenses, survey and legal description expenses, and county right-of-way permitting. Staff believes this amount is a reasonable cost estimate to extend the Utility's lines to serve the Myrtle Lake Hills subdivision.

This request is consistent with Sanlando's tariff in that it results in the cost causer paying the cost of this expansion. Normally, the main extension charge is paid by the developer at the time the line is constructed; however, in this instance it may take several years for all 116 property owners to connect to the system. This charge is only applicable to the 116 property owners in the Myrtle Lake Hills subdivision.

Conclusion

Staff recommends that Sanlando should be authorized to collect a water main extension charge of $5,526 per lot from the 116 property owners in the Myrtle Lake Hills subdivision. The recommended charge is reasonable and consistent with the guidelines set forth in Rule 25-30.580, F.A.C., and should be approved. The approved charge should be effective for service rendered on or after the stamped approval date of the tariff, pursuant to Rule 25-30.475, F.A.C. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice.

Issue 4: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action or tariff issues files a protest within 21 days of the issuance of the order, a consummating order should be issued, and the docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the Utility and approved by staff. If a protest is filed within 21 days of the issuance of the Order, the tariff should remain in effect subject to refund pending the resolution of the protest, and the docket should remain open. (Mapp)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action or tariff issues files a protest within 21 days of the issuance of the order, a consummating order should be issued, and the docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the Utility and approved by staff. If a protest is filed within 21 days of the issuance of the Order, the tariff should remain in effect subject to refund pending the resolution of the protest, and the docket should remain open.

Sanlando Utilities Corporation

Description of Proposed Service Territory

Current Territory:

That portion of Section 25, Township 20 South, Range 29 East, Seminole County, Florida, being more particularly described as follows:

Commence from the Northeast corner of Section 25, Township 01 South, Range 29 East and run 1,868.2 feet North 89°28'20" West; thence run South 0°31'40" West a distance of 1,790.9 feet to the Point of Beginning, thence run East 188 feet; thence run South 210 feet; thence run West 188 feet; thence run North 208 feet to the Point of Beginning.

Myrtle Lake Hill Subdivision:

A tract of land lying in section 25, Township 20 South, Range 29 East, Seminole County, Florida, being more particularly described as follows:

Commencing at the intersection of West Right-of-Way line of Interstate No. 4 with the North line of said Section 25, Township 20 South, Range 29 East; thence East 2550 feet, thence South 500 feet to the POINT of BEGINNING; thence South 45° West 600 feet, thence West 160 feet, thence South 150 feet, thence East 140 feet, thence South 110 feet, thence West 150 feet, thence South 75 feet, thence West 125 feet, thence South 755 feet, thence East 275 feet, thence South 160 feet, thence West 350 feet, thence South 150 feet, thence East 1800 feet to the East line of Section 25, Township 20 South, Range 29 East, thence North 1010 feet, thence North 22° West 878.2 feet, thence West 676.75 feet to the POINT of BEGINNING.

FLORIDA PUBLIC SERVICE COMMISSION

authorizes

Sanlando Utilities Corporation

pursuant to
Certificate Number 247-W

to provide water service in Seminole County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

Order Number	Date Issued	Docket Number	Filing Type
7128	02/26/1976	750737-WS	Original Certificate
8354	06/12/1978	780097-W	Amendment
9843	03/03/1981	780727-W	Territory Deletion
		780813-WS	Territory Deletion
		780952-W	Territory Deletion
9846	03/03/1981	800643-WS	Amendment
10084	06/19/1981	810179-WS	Amendment
10326	10/07/1981	810362-WS	Amendment
12567	09/30/1983	830237-WS	Amendment
14180	03/14/1985	840436-WS	Amendment
15331	11/04/1985	850551-WS	Amendment
15750	02/26/1986	860066-WS	Amendment
16748	10/20/1986	861178-WU	Amendment
PSC-99-0152-FOF-WS	01/25/1999	980957-WS	Transfer of Majority Control
PSC-01-2316-FOF-WS	11/27/2001	010887-WS	Transfer of Majority Control
PSC-04-0532-AS-WS	05/25/2004	030667-WS	Territory Amendment and Deletion
PSC-04-0782-FOF-WS	08/10/2004	030667-WS	Reconsideration and Clarification
PSC-06-0094-FOF-WS	02/09/2006	050499-WS	Transfer of Majority Control
PSC-06-0752-FOF-WS	09/05/2006	040384-WS	Amendment
PSC-09-0093-FOF-WU	02/13/2009	080644-WU	Amendment
PSC-12-0497-FOF-WS	09/27/2012	120084-WS	Transfer of Majority Control
*	*	150230-WU	Amendment

*** Order Numbers and dates to be provided at time of issuance**

Sanlando Utilities Corp. – Myrtle Lake Hills Subdivision
Service Availability Charges

Main Extension Charge per Residential Lot	$5,526

Item 11

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 18, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Ollila, Higgins, Margolis)
Division of Engineering (Ellis)
Office of the General Counsel (Tan)
Office of Industry Development and Market Analysis (Marr)

RE: Docket No. 150248-EG – Petition for approval of community solar pilot program, by Gulf Power Company.

AGENDA: 03/01/16 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 07/19/16 (8-Month Effective Date)

SPECIAL INSTRUCTIONS: None

Case Background

On November 19, 2015, Gulf Power Company (Gulf or company) filed a petition for approval of its voluntary five-year Community Solar Pilot Program (solar program or program) and associated tariffs, the termination of its Rate Rider PV (photovoltaics) tariff, and a request for a depreciation rate for the proposed solar PV facilities.

The proposed program, addressed in Issue 1, would offer all Gulf customers an opportunity to voluntarily contribute to the construction and operation of a 1 megawatt (MW) solar PV facility (solar facility) through annual subscriptions. The energy generated from the solar facility would provide power to all of Gulf's customers.

Issue 2 addresses Gulf's request for termination of its current voluntary Rate Rider PV (PV Rider) tariff.[1] The PV Rider allows any customer to purchase 100-watt blocks of PV energy for $6; however, customers are not charged until sufficient commitments are made to construct a PV facility or purchase PV energy from a third party. As of late 2015 there were 42 customers; to date, no customers have been charged under this tariff as no solar facility has been constructed and no solar energy has been delivered. Gulf also requests a depreciation rate for the proposed solar facilities, which is addressed in Issue 3.

Staff notes that on August 29, 2014, the Commission issued an order approving Florida Power & Light Company's (FPL) three-year Voluntary Solar Partnership Pilot Program (VSP program).[2] This program offers all FPL customers an opportunity to participate voluntarily in a program designed to contribute to the construction and operation of PV generation facilities in communities throughout FPL's service territory.

On January 7, 2016, the Commission issued an order suspending the tariff pursuant to Section 366.06(3), Florida Statutes (F.S.).[3] Staff issued two data requests to Gulf. The company responded to the first data request on January 4, 2016, and to the second data request on January 21, 2016. The proposed tariff pages are contained in Attachment 1. There are three interested persons in this proceeding: the Florida Industrial Power Users Group, the Office of Public Counsel, and the Southern Alliance for Clean Energy (SACE). On February 15, 2016, SACE filed comments on the solar program. The Commission has jurisdiction pursuant to Sections 366.06 and 366.075, F.S.

[1] Order No. PSC-99-2485-TRF-EI, issued December 20, 1999, in Docket No. 991317-EI, *In re: Petition by Gulf Power Company for approval of optional rate rider PV (photovoltaics).*
[2] Order No. PSC-14-0468-TRF-EI, issued August 29, 2014, in Docket No. 140070-EI, *In re: Petition for approval of voluntary solar partnership pilot program and tariff, by Florida Power & Light Company.*
[3] Order No. PSC-16-0015-PCO-EG, issued January 7, 2016, in Docket No. 150248-EG, *In re: Petition for approval of community solar pilot program, by Gulf Power Company.*

Discussion of Issues

Issue 1: Should the Commission approve the proposed community solar five-year pilot program and associated tariffs?

Recommendation: Yes. Staff believes that the proposed solar program provides an opportunity for customers to participate in a community solar project and also provides solar energy for Gulf's general body of ratepayers. Staff recommends that the Commission approve the proposed community solar five-year pilot program and associated tariffs, effective March 1, 2016.

Staff also recommends that Gulf file an initial annual report on the commercial operation date of the initial solar facility and subsequently on each anniversary date, to include participation levels, the level of participation by type of participant (e.g., one-year and five-year), how many subscriptions each participant purchases, subscription fee revenue, facility performance, program costs, the annual dollar amount of bill credits paid to participants, and the amount of annual avoided energy costs retained by Gulf. (Ollila, Ellis, Marr)

Staff Analysis:

Description of Proposed Solar Program

According to Gulf, the solar program is designed to allow customers to participate in and receive benefits from a solar facility without having to install, own, or maintain their own system. The program has an annual subscription fee used to cover the full projected annual revenue requirement of the program and a monthly bill credit for participants so that they receive credit for the energy produced by the solar facility. The program will also provide Gulf with the opportunity to collect and analyze data including customer interest, continuity of customer participation, mix of customer participation, customer satisfaction, actual program costs and sustainability. Gulf proposes that this program be piloted over a five-year period, beginning with the commercial operation of the solar facility.

During this pilot period Gulf plans to report to the Commission annually on the results of the program including participation levels, subscription fee revenue, facility performance, and program costs, beginning with the commercial operation of its solar facility. At the end of the five-year pilot period (estimated to be 2016-2021), Gulf will file a petition to continue, modify, or close the program and associated tariffs.

Initially, program subscription will be limited to a 1 MW facility, which Gulf states balances economies of scale with subscription achievability. Through this petition, Gulf is also seeking the Commission's approval to construct additional facilities if Gulf anticipates that new subscriptions will offset the revenue requirements of additional facilities. Gulf plans to provide both pre- and post-construction notification to the Commission of any facilities beyond the initial 1 MW facility, in addition to addressing the potential for additional facilities in its annual report.

Gulf's proposed facility does not fall under the Florida Electrical Power Plant Siting Act, Section 403.503(14), F.S., as it will be a solar facility of less than 75 MW in capacity. As the proposed facility is less than 75 MW, a Request for Proposal (RFP) to construct the initial facility was not

required according to Rule 25-22.082, Florida Administrative Code (F.A.C.). However, Gulf did issue an RFP for the construction of the initial facility. Gulf evaluated the bidders and proposals based on technical merit, energy production, and price. Gulf states that while each proposal met the technical requirements, the winning proposal had higher energy production and a lower equipment, procurement, and construction (also known as EPC) cost. According to Gulf, the installed cost of the 1 MW facility is expected to be approximately $2.6 million based on the results of the RFP issued by Gulf on September 22, 2015.

Market Research

In order to determine interest, Gulf retained a market research firm to conduct nine customer focus groups and telephonic surveys on solar in general and community solar programs specifically. Gulf states that the results indicated that a majority of residential and small business customers are supportive of solar initiatives, and that some are willing to pay a premium for solar. The average annual premium customers surveyed were willing to pay was $346 for residential customers and $414 for business customers. Of those customers interested in community solar, the research shows that two percent of residential customers and one percent of small business customers would "definitely" be willing to pay more for solar.

Subscriptions

In order to strike a balance between a cost low enough to be attractive to customers yet high enough to minimize the number of participants needed to fully subscribe to the program to build the initial facility, Gulf established annual subscription fee levels at $99 and, for a five-year commitment, $89. Staff notes that a five-year commitment may be made at any time during the pilot period. Gulf believes it is reasonable to distribute evenly the number of customer subscriptions between those who sign up for one year at a time and those who sign a five-year commitment, resulting in approximately 2,880 subscriptions required to cover the levelized (over 35 years) annual revenue requirement for the initial facility. The levelized annual revenue requirement for the initial facility is approximately $270,000. A customer may purchase more than one subscription, depending on the customer's usage. Gulf's customers total approximately 450,000, therefore the 2,880 subscriptions required represent less than one percent of Gulf's total customers. Gulf states that based on its market research sufficient customer interest exists to fully subscribe the initial facility.

The number of subscriptions a participant may purchase is limited by the participant's average annual kilowatt hour (kWh) consumption. The initial facility's projected output in the first year of operation is 2,150,000 kWh; that number divided by 2,880 (the total number of subscriptions) equals an output of 746 kWh per subscription projected to be delivered to the grid the first year. A customer with an average annual consumption of 12,000 kWh would be limited to 16 subscriptions in the first year of the program (12,000/746=16 subscriptions).

Revenue Requirements

The subscription fees are intended to cover the full projected annual revenue requirements of the solar facilities that would be constructed to support the solar program. Initially, subscriptions will be limited to a 1 MW facility, which will be owned and operated by Gulf and located in Milton, Florida. Assuming Commission approval of the program, the company anticipates that construction will be complete by the third quarter of 2016, with pre-enrollment beginning after

final Commission action approving the program. Participants will not be billed until the initial facility begins full commercial operation.

The projected levelized annual revenue requirements include all costs associated with the engineering, procurement, construction, and operations and maintenance (O&M) of the solar facility. Impacts of the federal Solar Investment Tax Credits are embedded in the calculation. The projected levelized annual revenue requirement is $270,000. Recurring capital costs are four percent of the $270,000 while O&M costs are 11 percent. The remaining 85 percent is attributable to the initial facility costs. The O&M costs include fixed O&M, insurance, and marketing. Marketing represents the only administrative cost included in the revenue requirement. Gulf anticipates the highest level of marketing costs will occur in 2016, $50,000 or approximately 19 percent of the $270,000 levelized annual revenue requirement. Marketing costs are expected to decline through the end of the five-year pilot period to $6,250 or 2.3 percent of the levelized annual revenue requirement. According to Gulf, one objective of the pilot program is to evaluate what actual marketing and other administrative costs are required to fully subscribe to this type of program.

Bill Credits and Avoided Energy Costs

Each program subscription in the solar program would receive a monthly bill credit of $2.11 for the first year. The monthly $2.11 credit is calculated by multiplying the solar weighted average annual avoided energy cost (3.4 cents/kWh) by 746 kWh (output per subscription projected to be delivered to the grid the first year), divided by 12 to get a monthly credit.

As stated in the utility's petition, Gulf would seek to recover the avoided energy costs associated with the output of the solar facilities through the Fuel and Purchased Power Cost Recovery Clause (Fuel Clause). To illustrate, the facility's projected output in the first year is 2,150,000 kWh. Based on the projected 3.4 cents/kWh avoided energy costs, the avoided energy costs associated with the solar facility is $73,100 (2,150,000 kWh x 3.4 cents/kWh).

Gulf states that this is appropriate because all customers will benefit from the output of the solar facility as the output will offset an equal amount of purchased energy (i.e., the amount of purchased energy will decrease by the 2,150,000 kWh). Gulf would recalculate the bill credit on an annual basis as part of the Fuel Clause proceeding to reflect changes in avoided energy cost and capacity output projections. Gulf will provide updated facility output and avoided energy costs for Commission review in the annual Fuel Clause projection filings.

Marketing

If the solar program is approved, Gulf plans to begin pre-enrollment following the receipt of a Commission final order approving the program. Marketing will focus on Gulf's three categories of eligible customers: residential, business, and industrial. For the three categories the marketing plan is expected to include targeted emails, bill inserts, webpage, social media promotion, print information, and a video that will be made available on the website and in social media.

Renewable Energy Credits

Gulf states that renewable energy credits (REC) resulting from the community solar program will be retired on behalf of the program participants. Once retired, the RECs cannot be sold or

transferred to another party. Gulf's proposed treatment of RECs will have a zero impact on program revenue requirements.

Analysis

Staff believes that, overall, the solar program and its components are reasonable. However, there are topics that staff believes merit further discussion.

Risk of Insufficient Subscriptions

Staff asked Gulf in a data request to explain who would assume the risk for unrecovered costs if subscriptions are insufficient to cover the projected annual revenue requirements during the pilot program or should Gulf decide to close the solar program after the five-year pilot period. Gulf stated that its market research indicates that sufficient customer interest exists to fully cover the project's program costs with revenues from participants. Furthermore, Gulf asserted that it believes it is important to remove uncertainty about whether the initial facility will be built; therefore, it plans to begin construction once it receives a final order while it is signing up participants. Gulf explained that the proposed solar program is experimental and limited in size and scope; undersubscription is not anticipated. Should undersubscription occur, Gulf noted that the initial facility will continue to provide service to all of Gulf's customers. The company stated that if subscriptions consistently fall significantly short of the number needed to recover the costs during the pilot, Gulf would anticipate further discussion with the Commission concerning the program.

Staff also asked Gulf if it would be willing to absorb costs if undersubscription occurs, as FPL has committed to in its VSP program.[4] Gulf responded that it acknowledges that its shareholders, as opposed to its non-participating customers, are assuming the risk that program costs will not be fully supported by the program structure. Gulf stated that it is not seeking by its petition to insulate itself or its shareholders from that risk. Furthermore, Gulf stated that it is not assuming that Commission approval of the solar program would have the effect of insulating shareholders from that risk. Gulf stated that it does reserve its right to petition the Commission for alternative treatment of the solar program and/or solar assets if circumstances develop in the future to warrant proposing alternative treatment. According to Gulf, for example, should the program's assets become cost-effective for Gulf's general body of customers in the future, Gulf asserts that it must retain the ability to petition the Commission for appropriate regulatory treatment of the assets based on the facts and circumstances as they exist at the time. Staff notes that this recommendation does not address prudency. Gulf will have to demonstrate prudency in a future proceeding, if it seeks to recover costs.

Avoided Energy Costs

By using annually projected avoided energy costs and recovering these from the general body of ratepayers through the Fuel Clause, Gulf is shifting some risk for avoided energy costs from the program participants to the general body of ratepayers. For example, if actual avoided energy costs are below the projected values Gulf calculated, non-participants would see a net loss. Conversely, if actual avoided energy costs are higher than projected, non-participants would see a net benefit. Regardless, Gulf would recover the projected avoided energy costs through the

[4] Order No. PSC-14-0468-TRF-EI, issued August 29, 2014, in Docket No. 140070-EI, *In re: Petition for approval of voluntary solar partnership pilot program and tariff, by Florida Power & Light Company.*

Fuel Clause, subject to Commission review. This is similar to fixed energy rates in purchased power agreements, although these tend to include multiple year terms and additional security provisions associated with system performance. For example, in Docket No. 150035-EI, the Commission approved three renewable purchased power agreements for solar facilities with 25-year terms featuring fixed energy rates.[5]

One method to mitigate the risk would be to include a true-up provision in the calculation of the annual avoided energy costs as part of the Fuel Clause. Gulf stated in response to staff's first data request that a true-up mechanism was possible but based on the utility's analysis the cost and complexity of implementation far exceeded any costs to be trued up. Staff would note that since this is a pilot program and the avoided energy cost will be recalculated each year, the difference between forecasted and actual as-available energy values should be minimal.

Reporting requirements

Gulf's planned annual reports to the Commission include participation levels, subscription fee revenue, facility performance, and program costs. Staff believes additional information should be included in the annual reports: the level of participation by type of participant (e.g., one-year and five-year), how many subscriptions each participant purchases, the annual dollar amount of bill credits paid to participants, and the amount of annual avoided energy costs retained by Gulf.[6] Gulf should file an initial annual report on the commercial operation date of the solar facility and subsequently on each anniversary date for the duration of the five-year pilot period. Gulf plans to provide both pre- and post-construction notification to the Commission of any facilities beyond the initial facility, in addition to addressing the potential for additional facilities in its annual reports. These reports should be filed in this docket.

Conclusion

Staff believes that the proposed solar program provides an opportunity for customers to participate in a community solar project and also provides solar energy for Gulf's general body of ratepayers. Staff recommends that the Commission approve the proposed community solar five-year pilot program and associated tariffs, effective March 1, 2016.

Staff also recommends that Gulf file an initial annual report on the commercial operation date of the initial solar facility and subsequently on each anniversary date, to include participation levels, the level of participation by type of participant (e.g., one-year and five-year), how many subscriptions each participant purchases, subscription fee revenue, facility performance, program costs, the annual dollar amount of bill credits paid to participants, and the amount of annual avoided energy costs retained by Gulf.

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[5] Order No. PSC-15-0155-PAA-EI issued April 22, 2015, in Docket No. 150035-EI, *In re: Petition for approval of energy purchase agreements between Gulf Power Company and Gulf Coast Solar Center I, LLC, Gulf Coast Solar Center II, LLC, and Gulf Coast Solar Center III, LLC.*

[6] Gulf states that the program is designed such that the avoided energy costs associated with facility output that is to be recovered through the Fuel Clause will be equal to the annual energy credits to be paid to subscribers if the program is fully subscribed (2,880 subscriptions). However, if the program is not fully subscribed, energy credits paid to subscribers would be less than the avoided energy costs recovered through the Fuel Clause.

Issue 2: Should the Commission approve the termination of the optional PV Rider tariff?

Recommendation: Yes. Staff believes that the termination of the optional PV Rider is reasonable and recommends that the Commission approve its termination effective March 1, 2016. If the Commission approves staff's recommendation, current participants should be notified of the termination of the PV Rider within 30 days of the effective date. (Ollila)

Staff Analysis: Gulf requests termination of its PV Rider tariff, a voluntary subscription program dating from 1999. The PV Rider is an optional rate rider that permits any customer to purchase one or more 100-watt blocks of PV energy for a monthly charge of $6.00 per block. Participating customers must commit to an initial term of five years; however, they are not charged until Gulf receives sufficient customer commitments to cover the cost of constructing a solar facility or purchasing solar energy from a third party. The minimum threshold for this program, 10,000 100-watt blocks, has not been attained, thus no solar facility has been built, no solar energy has been delivered, and no participant has been billed. Since 2005 the greatest number of participants, 70, occurred in 2005. The smallest number of participants is 42, as of the end of 2015.

Gulf requests to terminate the PV Rider irrespective of whether the Commission approves the company's proposed solar program discussed in Issue 1. Gulf asserts that continuing this rate rider in conjunction with its proposed solar program has the potential to lead to customer confusion and that the solar program is likely to be a preferable alternative to customers interested in promoting solar energy. Gulf notes that this program showed the difficulty of achieving adequate customer participation without a PV facility already in operation. If the proposed solar program is not approved, Gulf states it would want the flexibility to propose alternative solar program designs, which would likely differ from the existing PV Rider.

Conclusion

Staff believes that the termination of the optional PV Rider is reasonable and recommends that the Commission approve its termination effective March 1, 2016. If the Commission approves staff's recommendation, current participants should be notified of the termination of the PV Rider within 30 days of the effective date.

Issue 3: What is the appropriate depreciation rate for Gulf's proposed solar facilities?

Recommendation: Staff recommends the Commission approve a whole life depreciation rate of 2.9 percent, which is based on a 35-year average service life and zero percent net salvage for Gulf's proposed solar facilities. (Higgins)

Staff Analysis: Gulf is seeking Commission establishment of a depreciation rate for planned investments in utility-scale solar facilities. Specifically, Gulf requests approval to depreciate solar-to-electric generating facility investments over an average service life of 35 years, with a zero net salvage provision. Using these life and salvage parameters, the resulting whole life depreciation rate equals 2.9 percent. The major components of Gulf's planned initial solar PV facility include Solar World Sunmodule SW 320 XL MONO PV modules, SMA Sunny World Tripower 24000TL-US inverters, and RBI Solar Ground Mount racking units.[7] The company intends to record its utility-scale solar investments in Federal Energy Regulatory Commission accounts 340 thru 346, which are classified as "Other Power Production."

The Commission has experience addressing depreciation matters in utility-scale solar generation.[8] Most recently, the Commission approved depreciation life parameters for Tampa Electric Company's (TECO) solar PV generating unit at the Tampa International Airport (TIA). The Commission found TECO's proposed depreciation parameters of a 30-year average service life and a zero net salvage provision to be appropriate for initial investment recovery of the TIA Plant.[9] However, in the instant proceeding, Gulf is proposing to depreciate its solar plant investments over a 35-year life, while also estimating a zero net salvage provision. This results in a lower rate of depreciation, i.e. 2.9 percent versus the 3.3 percent approved for TECO. Staff notes that the Commission also ordered a 30-year life (and resulting 3.3 percent depreciation rate) for FPL's DeSoto and Space Coast Solar Energy Centers.[10]

Staff, through two data requests, asked how Gulf determined a 35-year life would be appropriate for use in recovering its solar plant investments. The company responded its life proposal was informed through a study conducted by Southern Company Services (SCS) and KPMG LLP (KPMG).[11] Generally speaking, the study divided components of a generic PV plant into three categories: PV panels, inverters, and other PV components. The three individual component categories' average service lives' were then multiplied by the percentage of overall initial investment they represent of the facility. At this point, the weighted average service lives were summed. Overall, the weighted average service life of the solar PV facility infrastructure totaled approximately 35 years. Staff has reviewed the SCS and KPMG Study and the findings are consistent with Gulf's request.

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[7] Gulf's responses to Staff's First Data Request No. 42.
[8] Order No. PSC-08-0731-PAA-EI, issued November 3, 2008, in Docket 080543-EI. *In re: Request for approval to begin depreciating new technology solar photovoltaic plant sites for DeSoto and Space Coast Solar Energy Centers over 30-year period, effective with in-service dates of units, by Florida Power & Light Company;* Order No. PSC-15-0573-PAA-EI, issued December 18, 2015, in Docket No. 150211-EI, *In re: Petition for approval of depreciation rates for solar photovoltaic generating units, by Tampa Electric Company.*
[9] Ibid.
[10] Order No. PSC-08-0731-PAA-EI.
[11] Gulf's responses to Staff's First Data Request No. 43 and Staff's Second Data Request No. 4 (Confidential).

Concerning Gulf's proposed zero net salvage provision, the company claims it currently has minimal experience operating and maintaining utility-scale solar facilities, and thus does not have sufficient data with respect to cost of removal or gross salvage values. However, the company claims it will address and update, as warranted, depreciation components through future depreciation studies. Staff notes according to Rule 25-6.0436(8)(a), F.A.C., the company is required to file an updated depreciation study at least once every four years from submission of its most recent study. Staff further notes that the Commission has previously ordered a zero net salvage provision for utility-scale solar facilities for both FPL and TECO.[12]

For the purposes of determining a depreciation rate for Gulf's planned solar PV investments, staff believes the methodology the company used as a basis for its request is reasonable. Staff also recognizes that if by estimating a 35-year life and a zero net salvage results in a rate of investment recovery that is inadequate, this would likely be identified in a future depreciation review proceeding and adjustment sought at that time. The Commission has methods and procedures for maintaining appropriate rates of asset recovery in Rule 25-6.0436, F.A.C. Gulf's request of a 35-year average service life for its solar PV investments, which is based on the SCS and KPMG Study, and a zero percent net salvage, appears reasonable at this time. If approved, the resulting whole life depreciation rate for Gulf's planned solar PV investments would be 2.9 percent.

Conclusion

For the reasons discussed above, staff recommends the Commission approve a whole life depreciation rate of 2.9 percent, which is based on a 35-year average service life and zero percent net salvage for Gulf's proposed solar facilities.

[12] Order No. PSC-08-0731-PAA-EI; Order No. PSC-15-0573-PAA-EI.

Issue 4: Should this docket be closed?

Recommendation: If Issues 1, 2, and 3 are approved and if a protest is filed within 21 days of the issuance of the order, the tariff should remain in effect pending resolution of the protest. There will not be any dollar amount subject to refund because Gulf will not begin pre-enrollment until a final order is issued. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order. (Tan)

Staff Analysis: If Issues 1, 2, and 3 are approved and if a protest is filed within 21 days of the issuance of the order, the tariff should remain in effect pending resolution of the protest. There will not be any dollar amount subject to refund because Gulf will not begin pre-enrollment until a final order is issued. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.

GULF POWER
A SOUTHERN COMPANY

Section No. VI
Original Sheet No. 6.99

RATE RIDER CS
COMMUNITY SOLAR
LIMITED AVAILABILITY EXPERIMENTAL RIDER
(OPTIONAL RIDER)

PAGE	EFFECTIVE DATE
1 of 2	

AVAILABILITY:

This Rate Rider is available to all Customers throughout the entire service area served by the Company on a first come first served basis subject to subscription availability. Multiple subscriptions may be purchased representing no more than the Customer's average annual energy consumption for the previous twelve month period. Power produced from community solar photovoltaic (PV) facilities may not be specifically delivered to the Customer, but will displace power that would have been otherwise produced from traditional generating facilities. Availability is limited to those Customers enrolled in the community solar program.

APPLICABILITY:

This optional rider is offered in conjunction with the applicable rates, terms, and conditions under which the Customer takes service from the Company.

RATE:

Subscription Fee:	$99.00 per year
Five-Year Contract Subscription Fee Option:	$89.00 per year

BILL CREDIT:

Participating Customers will be eligible to receive a monthly bill credit for each subscription purchased. The monthly bill credit will be determined each calendar year and stated on an average monthly basis. The bill credit will be calculated using the projected hourly output of the program's PV facilities, the Company's projected hourly avoided energy costs, and the number of subscriptions needed to fully subscribe the program.

ISSUED BY: S. W. Connally, Jr.

GULF POWER
A SOUTHERN COMPANY

Section No. VI
Original Sheet No. 6.100

PAGE	EFFECTIVE DATE
2 of 2	

(Continued from Rate Rider CS, Sheet No. 6.99)

TERM OF SERVICE:

Service under this rate rider shall be for a minimum period of one (1) year. The non-refundable subscription fee will automatically renew for the following year, unless the Customer notifies the Company otherwise at the time of the initial enrollment in the program.

TAX ADJUSTMENT:
See Sheet No 6.37

FRANCHISE FEE BILLING:
See Sheet No 6.37

GROSS RECEIPTS TAX ADJUSTMENT:
See Sheet No 6.37

PAYMENT OF BILLS:
See Sheet No 6.37

Service under this rate rider is subject to Rules and Regulations of the Company and the Florida Public Service Commission.

ISSUED BY: S. W. Connally, Jr.

Section No. VII
Original Sheet No. 7.63

Gulf Power Company
Community Solar Customer Five-Year Participation Agreement

Form 29

This Agreement is made by and between Gulf Power Company, ("Gulf Power" or the "Company") and _____ (the "Customer"). The Company and the Customer are collectively referred to as the "Parties."

WHEREAS, the Customer currently receives electric service from the Company pursuant to Gulf Power's Rate Schedule _____ at the following location _____ which has been assigned a Gulf Power Account Number of _____ (the "Service Premises"); and

WHEREAS, the Customer's actual (or estimated, in the case of insufficient service history) average kilowatt-hour ("kWh") consumption at the Service Premises for the previous twelve month period is _____; and

WHEREAS, the Customer desires to participate in the Company's voluntary community solar offering (the "Solar Program") in accordance with the terms of Rate Rider CS (Community Solar) which has been approved by the Florida Public Service Commission (the "FPSC") a copy of which is attached to this Agreement and incorporated herein as Exhibit "A";

The Parties hereby agree as follows:

1. The Customer agrees to participate in the Solar Program for a period of five (5) Annual Periods beginning on the first day of the billing cycle in which the Customer's first Annual Subscription Fee (as defined below) is paid, (the "Term") subject to the terms and conditions contained in the Rate Rider and this Agreement. For purposes of this Agreement an "Annual Period" means any one of a succession of consecutive three hundred sixty five (365) day periods (or a three hundred sixty six (366) day period in the case of a leap year).

2. The Customer agrees to purchase a total of _____ subscription(s) during each Annual Period of the Term, which subscriptions shall not exceed 100 percent of actual (or estimated, in the case of insufficient service history) average kWh consumption at the Service Premises for the previous twelve (12) month period.

3. The Customer agrees to pay the Company an annual subscription fee of $_____ ($89.00 multiplied by the number of subscriptions purchased) throughout the Term in exchange for their right to participate in the Solar Program ("Annual Subscription Fee"). The first Annual Subscription Fee will appear as a line item on the Customer's monthly electric service billing statement in the month following the first month of the Customer's enrollment in the Solar Program and will be due and payable to the Company on or before the date specified on the billing statement. Subsequent Annual Subscription Fees will automatically appear as line items on billing statements rendered to the Customer during the second through fifth Annual Periods of

ISSUED BY: S. W. Connally, Jr

Effective

Section No. VII
Original Sheet No. 7.64

Form 29 (Continued)

the Term. The Customer's aggregate monetary obligation to Gulf Power under this Agreement totals _____ (Annual Subscription Fee multiplied by five (5)).

4. In the event the Customer fails to pay an Annual Subscription Fee by the date specified in a billing statement, the Company reserves the right to terminate the Customer's participation in the Solar Program. Termination of the Customer's right to participate in the Solar Program will in no way impact the Customer's right to receive, or the Company's obligation to provide, electric service to the Customer pursuant to the Company's Tariff for Retail Electric Service.

5. In the event that the Customer transfers their electric service to a different location within Gulf Power's service area, the Customer's Solar Program subscription will be transferred to the new service location. The Customer shall not be permitted to transfer or assign their subscription to third parties.

6. If, for any reason, the Customer moves to a location outside of Gulf Power's service area and discontinues electric service with Gulf Power as a result, the Customer shall be released from any obligation to pay Gulf Power for Annual Subscription Fees which have yet to be billed to the Customer during the Term. However, the Customer shall not be entitled to a refund for Annual Subscription Fees which have previously been paid to the Company.

7. In the event that the Solar Program is discontinued or modified by the Florida Public Service Commission, Gulf Power reserves the right to terminate this Agreement. In such case, the Customer shall be released from any obligation to pay Gulf Power for Annual Subscription Fees which have yet to be billed to the Customer during the Term.

8. Unless otherwise provided in this Agreement, the Customer's obligation to pay the Annual Subscription Fee for each Annual Period during the Term is not subject to termination or cancellation by the Customer.

9. Any and all Renewable Energy Credits ("RECs"), associated with the Customer's subscription to the Solar Program will be retired by the Company on behalf of the Customer. For purposes of this Agreement the term RECs means any and all credits, including any emissions reduction credits, such as CO2 emission reduction credits, for renewable energy generated by the solar facilities that could qualify or do qualify for application toward compliance with any local, state or federal energy portfolio standard, green pricing program or other renewable energy or environmental mandate or objective. By way of example, if the actual output of the solar facilities associated with the Solar Program totals 2,100,000 kWh in a given Annual Period, the maximum number of subscriptions to the Program is 3,000 and the Customer has secured 10 subscriptions, the Company would retire RECs equivalent to 7,000 kWh for that particular customer.

ISSUED BY: S. W. Connally, Jr.

Effective

Section No. VII
Original Sheet No. 7.65

Form 29 (Continued)

10. This Agreement does not convey to the Customer any right, title or interest in or to any portion of the property comprising the solar facilities constructed pursuant to the Solar Program. Such facilities will be owned, operated, controlled and maintained exclusively by the Company and any tax credits or other tax benefits associated with the construction and/or ownership of such facilities will belong solely to the Company.

11. Due to the cost to construct the solar facilities, the Customer and other participants in the Solar Program will be paying a monetary premium during the Term as compared to non-participants. Bill credits issued to the Customer pursuant to the Solar Program are not intended, or expected, to fully offset subscription fees paid by the Customer.

12. This Agreement constitutes the entire agreement between the Parties with respect to the Customer's participation in the Solar Program and supersedes all previous proposals, whether oral or written, and all other communications between the Parties. This Agreement is not intended to alter or modify any rate, charge, term or condition of electric service provided by the Company to the Customer. The Customer will continue to be billed for all of their electricity consumption at the applicable retail rate and will see the bill credits for solar facility production as dollars that offset their total bills.

13. This Agreement shall be governed by the laws of the State of Florida, including applicable regulations of the Florida Public Service Commission and the Company's Tariff for Retail Electric Service.

Customer:	Gulf Power Company
_____	_____
Customer Signature	Representative of Gulf Power
_____	_____
Customer Printed Name	Printed Name
_____	
Customer Account Number	

ISSUED BY: S. W. Connally, Jr.

Effective:

GULF POWER
A SOUTHERN COMPANY

Section No. VI
~~First~~ Second Revised Sheet No. 6.89
Canceling ~~Original~~ First Sheet No. 6.89

~~RATE RIDER PV~~
~~PHOTOVOLTAICS~~
~~(OPTIONAL RIDER)~~

PAGE	EFFECTIVE DATE
~~1~~ of ~~2~~	~~December 15, 1999~~

~~AVAILABILITY:~~

~~To all customers served throughout the Company's service area from existing lines of adequate capacity. Rate Rider PV customers will be served from the existing electrical system. Customers may purchase photovoltaic energy in 100 watt blocks. Multiple blocks may be purchased. Power purchased or produced from photovoltaic facilities may not be specifically delivered to the customer, but will displace power that would have otherwise been produced from traditional generating facilities.~~

~~APPLICABILITY:~~

~~Applicable, upon request, to all customers in conjunction with all standard rates. Construction of the photovoltaic facility or power purchased from photovoltaic facilities will begin upon the attainment of sufficient commitments from all participants across the Southern Company electric system where the option is available and after obtaining any needed permits or other regulatory approvals for construction. Customer billing will begin with the second month following the date in which power is purchased from photovoltaic generating facilities or in which a photovoltaic generating facility of the Company begins commercial operation.~~

~~MONTHLY RATE:~~

~~EarthCents Solar Charge: $6.00 per 100 Watt block~~

~~TERM OF AGREEMENT:~~

~~Service under Rate Rider PV shall be for an initial term of five (5) years and may be terminated by either party following two (2) years written notice to the other party. Such two (2) year notice to terminate can be given at any time following year three (3) of the initial term.~~

~~TAX ADJUSTMENT:~~

GULF POWER
A SOUTHERN COMPANY

Section No. VI
~~First~~ Second Revised Sheet No. 6.90
Canceling ~~Original~~ First Sheet No. 6.90

PAGE	EFFECTIVE DATE
~~2 of 2~~	~~December 15, 1998~~

~~(Continued from Rate Rider PV, Sheet No. 6.89)~~

~~GROSS RECEIPTS TAX ADJUSTMENT:~~
THIS PAGE IS RESERVED FOR FUTURE USE.

~~See Sheet No. 6.37~~

~~PAYMENT OF BILLS:~~

~~Bills for service will be rendered monthly by the Company to the Customer. Payment is due when rendered, and becomes delinquent twenty (20) days after mailing or delivery to the Customer. At least five (5) days written notice separate from any billing will be given before discontinuing service. Payment may be made at offices or authorized collecting agencies of the Company. Care will be used to have bills properly presented to the Customer, but non-receipt of the bill does not constitute release from liability or payment. This provision for payment of bills shall be applied to this rate rider together with all underlying rate schedules.~~

~~Service under this rate schedule is subject to Rules and Regulations of the Company and the Florida Public Service Commission.~~

Item 12

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 18, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Rome)
Office of the General Counsel (Villafrate)

RE: Docket No. 150252-EU – Joint petition for approval of territorial agreement in Alachua, Marion, Columbia, Levy and Volusia Counties by Clay Electric Cooperative, Inc. and Duke Energy Florida, LLC.

AGENDA: 03/01/16 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On November 24, 2015, Clay Electric Cooperative, Inc. (Clay) and Duke Energy Florida, LLC (Duke) filed a joint petition for approval of a territorial agreement (agreement) in Alachua, Marion, Columbia, Levy, and Volusia Counties. The proposed agreement is Attachment A to the petition, while the maps and written description delineating the area to be covered by the proposed agreement are provided in petition Exhibits A and D, respectively.[1] The proposed

[1] Due to the volume of the proposed agreement and associated exhibits, staff did not attach the agreement to this recommendation.

agreement would consolidate the three current territorial agreements between Duke and Clay for the provision of electric service in the five counties.[2]

The territorial boundaries have been modified in each county that is covered by the proposed agreement. If approved, the agreement would result in the transfer of 441 customers from Clay to Duke (52 commercial and 389 residential) and the transfer of 83 customers from Duke to Clay (16 commercial and 67 residential).

During its evaluation of the joint petition, staff issued a data request to the joint petitioners for which responses were received on December 18 and 21, 2015. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

[2] Order No. 13023, issued February 23, 1984, in Docket No. 840022-EU, *In re: Joint Stipulation between Florida Power Corporation and Clay Electric Cooperative for a territorial agreement* [Volusia County], Order No. 24312, issued April 2, 1991, in Docket No. 900064-EU, *In re: Petition to resolve territorial dispute between Clay Electric Cooperative, Inc. and Florida Power Corporation* [Alachua County], and Order No. PSC-95-1434-FOF-EU, issued November 27, 1995, in Docket No. 950851-EU, *In re: Joint Petition for approval of territorial agreement in Marion, Levy, and Columbia Counties between Florida Power Corporation and Clay Electric Cooperative, Inc.*

Discussion of Issues

Issue 1: Should the Commission approve the joint petitioners' proposed agreement?

Recommendation: Yes, the Commission should approve the proposed agreement. (Rome)

Staff Analysis: Pursuant to Section 366.04(2)(d), F.S., the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Rule 25-6.0440(2), Florida Administrative Code (F.A.C.), states that in approving territorial agreements, the Commission may consider:

(a) The reasonableness of the purchase price of any facilities being transferred;

(b) The reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electrical service to the existing or future ratepayers of any utility party to the agreement; and

(c) The reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.

Unless the Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved.[3]

Through the proposed agreement, the joint petitioners desire to clearly delineate the territorial boundaries within the five-county area in order to serve customers more reliably and economically. Pursuant to Section 1.9 of the proposed agreement, the effective date of the agreement would be the date on which a Consummating Order is issued by the Commission, provided no timely protests are filed. The duration of the agreement would be 20 years from the effective date.

The petitioners state that in accordance with Rule 25-6.0440(1)(d), F.A.C., the customers that would be transferred between utilities pursuant to the proposed agreement were notified by mail of the transfer and a description of the differences between Duke's and Clay's rates was provided.[4] In January 2016, staff's calculated rate comparison for residential customers, using 1,000 kilowatt-hours (kWh), was $111.30 for Duke and $117.90 for Clay; the rate comparison for commercial customers, using 1,500 kWh, was $171 for Duke and $179 for Clay.[5] With regard to the degree of acceptance by affected customers, the petitioners represent that Duke has not received any feedback, questions or concerns from customers; Clay has received two inquiries from customers seeking additional information, but those customers expressed no opinion, either for or against, the proposed agreement. The joint petitioners expect that all transfers of customers will be completed within 36 months of the effective date of the proposed agreement and will notify the Commission in writing if additional time is needed. Duke will apply customers' deposits to their last electric bill and will directly refund any surplus.

[3] Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).
[4] Petition Exhibit E and petitioners' responses to staff's data request
[5] All commercial customers that would be transferred are general services non-demand customers.

Pursuant to Sections 3.3 and 3.5 of the proposed agreement, Clay and Duke may elect to purchase the electric facilities used exclusively for providing electric service to the transferred customers by using a common engineering cost estimation methodology such as the Handy-Whitman index to determine the value. In response to staff's data request, the petitioners stated that they plan to make decisions regarding the exchange and purchase of facilities as soon as practical should the Commission approve the proposed agreement.

The joint petitioners assert that the proposed agreement will avoid duplication of services and wasteful expenditures and will protect the public health and safety from potentially hazardous conditions. The joint petitioners believe and represent that the Commission's approval of the proposed agreement is in the public interest.

After review of the petition, the proposed agreement, and the joint petitioners' responses to its data request, staff believes that the proposed agreement is in the public interest and will enable Clay and Duke to better serve their current and future customers. It appears that the proposed agreement eliminates any potential uneconomic duplication of facilities and will not cause a decrease in the reliability of electric service. As such, staff believes that the proposed agreement between Clay and Duke will not cause a detriment to the public interest and recommends that the Commission approve it.

Issue 2: Should this docket be closed?

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

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

Item 13

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 18, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Rome)
Office of the General Counsel (Janjic)

RE: Docket No. 160025-EU – Joint petition for approval of amendment to territorial agreement in Orange County, by Orlando Utilities Commission and Duke Energy Florida, LLC.

AGENDA: 03/01/16 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brisé

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On January 22, 2016, Orlando Utilities Commission (OUC) and Duke Energy Florida, LLC (Duke) filed a joint petition to extend the term of their current territorial agreement (current agreement) until August 1, 2017. In 2007, the Commission approved the current agreement for a nine year term expiring February 1, 2016.[1] The joint petitioners stated that they need additional time to negotiate a new territorial agreement. The proposed amendment to extend the term is shown in Attachment A. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

[1] Order No. PSC-07-0562-PAA-EU, issued July 5, 2007, in Docket No. 070137-EU, *In re: Joint petition for approval of territorial agreement in Orange County by Orlando Utilities Commission and Progress Energy Florida, Inc.*

Discussion of Issues

Issue 1: Should the Commission approve the amendment to the territorial agreement between OUC and Duke?

Recommendation: Yes, the Commission should approve the amendment to the territorial agreement between OUC and Duke. (Rome)

Staff Analysis: The proposed amendment to the territorial agreement, as shown in Attachment A, extends the term of the current agreement until August 1, 2017, to allow the joint petitioners additional time to negotiate a new territorial agreement. All other provisions of the current agreement remain in effect.[2]

In approving the current agreement, the Commission found that the agreement is "...in the public interest...eliminates existing or potential uneconomic duplication of facilities, and it does not cause a decrease in the reliability of electric service to existing or future ratepayers."[3] Staff believes that the requested extension of time is reasonable and does not appear to be detrimental to the parties or the public interest. Any subsequent modification to the territorial agreement will be brought before the Commission for its consideration pursuant to Section 366.04, F.S. Therefore, staff recommends approval of the proposed amendment to the territorial agreement to provide OUC and Duke with additional time to negotiate a new territorial agreement.

[2] In response to a staff inquiry, the joint petitioners clarified that references to Osceola County in the joint petition and the proposed amendment to the territorial agreement were scrivener's errors.

[3] Order No. PSC-07-0562-PAA-EU, issued July 5, 2007, in Docket No. 070137-EU, *In re: Joint petition for approval of territorial agreement in Orange County by Orlando Utilities Commission and Progress Energy Florida, Inc.*, page 3.

Issue 2: Should this docket be closed?

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

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

AMENDMENT TO TERRITORIAL AGREEMENT

Orlando Utilities Commission (OUC) and Duke Energy Florida, LLC (DEF), enter into this Amendment to their Territorial Agreement for Orange County on this _____ day of January, 2016.

WITNESSETH:

WHEREAS, OUC and DEF are parties to a currently effective territorial agreement delineating their respective service territories in Orange and Osceola Counties (the "Current Agreement"), which has been approved by order of the Florida Public Service Commission (the "Commission") in Order No. PSC-07-0608-CO-EU, issued July 30, 2007, in Docket No. 070137-EU; and

WHEREAS, the term of the Current Agreement will expire February 1, 2016; and

WHEREAS, OUC and DEF have entered into negotiations for the purpose of reaching a new territorial agreement to replace the Current Agreement upon its expiration; and

WHEREAS, OUC and DEF recognize that they will be unable to successfully conclude their negotiations by the expiration date of the Current Agreement as it presently exists; and

WHEREAS, OUC and DEF desire to extend the expiration of the Current Agreement to August 1, 2017, in order to provide sufficient time to pursue the opportunity for a successful conclusion of their negotiations, and to seek Commission approval of the resulting new territorial agreement; and

NOW, THEREFORE, OUC and DEF hereby agree as follows:

1. The term of the Current Agreement, shall be extended to and including August 1, 2017.
2. Except as modified herein, the terms and conditions of the Current Agreement shall remain in full force and effect.
3. This Amendment to the Current Agreement will become effective and enforceable only upon the issuance of an Order by the Commission approving the Amendment to the Current Agreement in its entirety.

IN WITNESS WHEREOF, OUC and DEF have caused this Amendment to be executed by their duly authorized representatives on the day and year first above stated.

ORLANDO UTILITIES COMMISSION

BY: _____

NAME: KENNETH P. KSIONEK

TITLE: [illegible]

Approved as to form and legality
OUC Legal Department
DATE: 1/21/16 BY: _____

DUKE ENERGY FLORIDA

BY: _____

NAME: ALEX GLENN

TITLE: STATE PRESIDENT

DUKE ENERGY, INC.
LEGAL DEPARTMENT
APPROVED BY: _____
DATE: 1/21/16

Item 14

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 18, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Stratis, Wu)
Division of Engineering (King, Wooten)
Office of the General Counsel (Janjic)
Office of Industry Development and Market Analysis (Clemence)

RE: Docket No. 160017-EI – Petition for approval of depreciation rates for solar photovoltaic generating units, by Duke Energy Florida, LLC.

AGENDA: 3/1/2016 – Regular Agenda – Proposed Agency Action

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brisé

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Pursuant to Rule 25-6.0436(3)(a), Florida Administrative Code (F.A.C.), electric utilities are required to maintain depreciation rates and accumulated depreciation reserve in accounts or subaccounts as prescribed in Rule 25-6.014(1), F.A.C. Rule 25-6.0436(3)(b), F.A.C., provides that "[u]pon establishing a new account or subaccount classification, each utility shall request Commission approval of a depreciation rate for the new plant category." On January 11, 2016, Duke Energy Florida, LLC (DEF or the company) filed a petition, in accordance with this rule, to establish depreciation rates for its solar photovoltaic generating units and associated equipment. The Florida Public Service Commission (Commission) has jurisdiction in this matter pursuant to Sections 366.04, 366.05, and 366.06, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission approve DEF's proposed depreciation rates for DEF's solar photovoltaic generating units and associated equipment?

Recommendation: Yes. Staff recommends that the Commission approve a 30-year life and a whole life depreciation rate of 3.3 percent, for DEF's solar photovoltaic generating units. (Stratis, Clemence, Wooten, Wu)

Staff Analysis: DEF seeks the Commission's approval of depreciation rates of 3.3 percent for specified subaccounts to apply to solar photovoltaic (PV) generating units and associated equipment it is constructing at two facilities: the Perry Solar Facility, in Taylor County, and the Osceola Solar Facility, in Osceola County. The Perry facility will be a 5.1 megawatt system, and the Osceola facility will be a 3.8 megawatt system. DEF notes that the depreciation rates and subaccounts would also apply to ". . . such other solar photovoltaic generating units as may be constructed in the future." The two facilities will be constructed on property owned by DEF in Taylor and Osceola counties, both located in DEF's service area. DEF will own all equipment associated with the two facilities. DEF assigns an expected operating life to the systems of 30 years for the Perry and Osceola facilities, and for the 9 other solar PV facilities planned by DEF.[1]

At the time of the petition, DEF had not yet determined the retirement unit structure that it will use. The company plans to include these facilities in its next Annual Status Report, due on April 30, 2016. DEF seeks approval of the 3.3 percent depreciation rate for the following subaccounts:

303.xx Intangible Plant

341.xx Structures and Improvements

343.xx Other Generation Plant

345.xx Accessory Electric Equipment

The major components of the solar PV generating system include solar PV panels, inverters, racking support system, and transformers. DEF cites information from vendors, industry, and from the Technical Advisor of the Solar Energy Technologies Office of the US Department of Energy, as well as industry studies produced by the National Renewable Energy Laboratory (NREL), in support of its estimates of the expected life of the facilities and components.

In Order Nos. PSC-08-0731-PAA-EI and PSC-15-0573-PAA-EI the Commission adopted a 30-year life with zero net salvage for comparable solar PV generating units for Florida Power & Light Company (FPL) and for Tampa Electric Company (TECO). The Commission authorized FPL and TECO to use the resulting depreciation rate of 3.3 percent for the same subaccounts DEF proposes for its solar PV generating units and related equipment.

[1] DEF response to Staff's First Data Request, No. 1b. The Solar 3 facility will be located in either Volusia or Suwannee County; the locations of the remaining projects remain to be determined.

Conclusion

Staff believes that DEF's depreciation rate request is supported by industry information and studies and is consistent with previous Commission practice. Therefore, staff believes a 30-year life and a whole life depreciation rate of 3.3 percent is appropriate at this time for DEF's solar photovoltaic generating units and associated equipment, applied to each of the related subaccounts discussed in the staff analysis.

Issue 2: What should be the effective date for the implementation of the new depreciation rates for DEF's solar photovoltaic generating units and associated equipment?

Recommendation: Staff recommends the Commission approve an effective date of March 15, 2016, for the implementation of the new depreciation rates for DEF's solar photovoltaic generating units and associated equipment. (Stratis)

Staff Analysis: Depreciation is the recovery of invested capital representing equipment that provides service to the public. This recovery is designed to take place over the related period of service to the public, beginning with the equipment's in-service date. In their responses to staff's first data request, DEF provides in-service dates of May 2016 for the Osceola project and June 2016 for the Perry project. DEF requests the Commission to approve the new depreciation rates for solar photovoltaic generating units and associated equipment, effective March 15, 2016. An effective date of March 15, 2016 would allow sufficient time for the company to make the necessary adjustments to its accounting system before the in-service dates of the Osceola and Perry projects. Staff believes an effective date of March 15, 2016 for the implementation of the depreciation rates for the generating units and associated equipment is appropriate.

Issue 3: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon issuance of the consummating order. (Janjic)

Staff Analysis: At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.