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September 13, 2016

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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: August 31, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Hopkins, Cuello)
Office of Telecommunications (Flores)

RE: Application for Certificate of Authority to Provide Telecommunications Service

AGENDA: 9/13/2016 - Consent Agenda - Proposed Agency Action - Interested Persons May Participate

SPECIAL INSTRUCTIONS: None

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

DOCKET NO.	COMPANY NAME	CERT. NO.
160087-TX	GigaMonster, LLC	8889
160161-TX	WAHL TV INC.	8898

The Commission is vested with jurisdiction in this matter pursuant to Section 364.335, 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: August 31, 2016

TO: Docket No. 160049-EU

FROM: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk

RE: Rescheduled Commission Conference Agenda Item

Staff's memorandum assigned DN 03967-16 was filed on June 23, 2016, for the July 7, 2016 Commission Conference. As the vote sheet reflects, this item was deferred. This item has been placed on the September 13, 2016 Commission Conference Agenda.

/css

FILED JUN 23, 2016
DOCUMENT NO. 03967-16
FPSC - COMMISSION CLERK

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: June 23, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Cowdery) KG SML.
Division of Economics (Draper, Guffey) SKG EJB PD

RE: Docket No. 160049-EU – Petition for modification of territorial order based on changed legal circumstances emanating from Article VIII, Section 2(c) of the Florida Constitution, by the Town of Indian River Shores.

AGENDA: 07/07/16 – Regular Agenda: Issues 1 – 4 – Oral Argument Not Requested – Participation at Commission's Discretion; Issue 5 is Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Patronis

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

The City of Vero Beach (Vero Beach) provides electric service to the portion of the Town of Indian River Shores (Indian River Shores) located south of Old Winter Beach Road, pursuant to four territorial orders of the Commission that approved territorial agreements between Vero Beach and Florida Power & Light Company (FPL). *See* Order No. 5520, issued August 29, 1972, in Docket No. 72045-EU, *In re: Application of Florida Power and Light Company for approval of a territorial agreement with the City of Vero Beach*; Order No. 6010, issued January 18, 1974, in Docket No. 73605-EU, *In re: Application of Florida Power & Light Company for approval of a modification of territorial agreement and contract for interchange service with the City of Vero Beach, Florida*; Order No. 10382, issued November 3, 1981 and Order No. 11580, issued February 2, 1983, in Docket No. 800596-EU, *In re: Application of FPL and the*

City of Vero Beach for approval of an agreement relative to service areas; and Order No. 18834, issued February 9, 1988, in Docket No. 871090-EU, *In re: Petition of Florida Power & Light Company and the City of Vero Beach for approval of amendment of a territorial agreement* (referred to collectively as the Territorial Orders).

Although Vero Beach began providing electric service to residents of Indian River Shores prior to 1968, in that year Vero Beach and Indian River Shores entered into a contract whereby Indian River Shores requested and Vero Beach agreed to provide water service and electric power to any residents within the corporate limits of Indian River Shores (1968 Contract). In 1986, Indian River Shores and Vero Beach entered into a 30-year franchise agreement that superseded the 1968 Contract as to electric service and granted Vero Beach the sole and exclusive right to construct, maintain, and operate an electric system in public places in that portion of Indian River Shores lying south of Winter Beach Road (Franchise Agreement).

By letter of July 18, 2014, Indian River Shores advised Vero Beach that it was taking several actions to achieve rate relief for its citizens who receive electric service from Vero Beach. The letter states that Vero Beach's provision of electric service within Indian River Shores is permitted pursuant to the Franchise Agreement, but because of Vero Beach's unreasonably high electric rates as compared to FPL's rates, Indian River Shores will not renew the Franchise Agreement when it expires on November 6, 2016, and Vero Beach will no longer have Indian River Shores' permission to occupy rights-of-way or to operate its electric utility within Indian River Shores. In addition, the letter advised Vero Beach that Indian River Shores had filed a lawsuit against Vero Beach that included a challenge to Vero Beach's electric rates and "a Constitutional challenge regarding the denial of rights" to Vero Beach electric customers living in Indian River Shores.

Following unsuccessful mediation between Indian River Shores and Vero Beach pursuant to the Florida Governmental Conflict Resolution Act, Chapter 164, Florida Statutes (F.S.), Indian River Shores filed an amended complaint asking the circuit court, in part, to declare that upon expiration of the Franchise Agreement giving Vero Beach permission to provide electric service in Indian River Shores, Vero Beach has no legal right to provide electric service in Indian River Shores. In its amended complaint, Indian River Shores argued that there is no general or special law giving Vero Beach authority to provide electric service in Indian River Shores as required by Article VIII, Section 2(c), Florida Constitution, and for that reason, Vero Beach may only provide electric service in Indian River Shores if it has Indian River Shores' consent. Vero Beach filed a motion to dismiss this claim, which the Commission supported in court as amicus curiae, on the grounds that the determination of whether Vero Beach has authority to provide service in Indian River Shores is within the Commission's exclusive and superior jurisdiction over territorial agreements. On November 11, 2015, the Court dismissed this claim, finding that the relief requested is squarely within the jurisdiction of the Commission.

On January 5, 2016, Indian River Shores filed a petition for declaratory statement with the Commission, asking for a declaration that the Commission lacks jurisdiction to interpret Article VIII, Section 2(c), Florida Constitution, for purposes of determining whether Indian River Shores has a constitutional right to be protected from Vero Beach providing electric service within Indian River Shores without Indian River Shores' consent. On March 4, 2016, the

Commission issued an order declaring that it 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 Indian River Shores upon expiration of the Franchise Agreement. Order No. PSC-16-0093-FOF-EU. The Commission found that in a proper proceeding, it has the authority to interpret the phrase "as provided by general or special law" as used in Article VIII, Section 2(c), Florida Constitution.

On March 4, 2016, pursuant to Sections 120.57 and 366.04, F.S., Indian River Shores filed a Petition for Modification of Territorial Order Based on Changed Legal Circumstances Emanating from Article VIII, Section 2(c) of the Florida Constitution (Petition). Indian River Shores argues that the Commission is required to modify the Territorial Orders because there is no general or special law authorizing Vero Beach to provide service in Indian River Shores and, for this reason, Vero Beach may only provide such service if it has Indian River Shores' consent. Indian River Shores argues that Vero Beach has always had its temporary consent to provide electric service, and currently has that consent pursuant to the Franchise Agreement that will expire November 6, 2016. The Petition alleges that the withdrawal of Indian River Shores' consent caused by expiration of the Franchise Agreement is the changed legal circumstance requiring the Commission to modify the Territorial Orders. The result would be to place that portion of Indian River Shores currently in Vero Beach's service area into FPL's service area so that all of Indian River Shores would be served by FPL.

The Petition alleges that Vero Beach's electric rates have been some of the highest in Florida over the last 10 years, despite Vero Beach having cost advantages as a municipal electric utility. The Petition further alleges that Indian River Shores and its residents have paid approximately $16 million more for electricity than they would have paid if electric service had been provided by FPL. The Petition states that unlike FPL, Vero Beach's rates are not regulated by the Commission, but are set by the City Council whose members are elected by Vero Beach residents. The Petition further alleges that because Indian River Shores and its residents who receive electric service from Vero Beach are located outside of Vero Beach, they cannot vote for the City Council members and thus have no voice in electing the officials who manage Vero Beach's electric utility and set electric rates.

Indian River Shores alleges that Vero Beach abuses its monopoly power by diverting electric utility revenues from Indian River Shores and its residents to Vero Beach's general fund as a surrogate vehicle for taxation to keep its ad valorem property taxes artificially low and to cover costs unassociated with operation of the electric utility. The Petition alleges that this includes subsidizing Vero Beach's unfunded pension obligations to current and former employees unassociated with Vero Beach's provision of electric service. The Petition alleges that modifying the current territorial boundary line to place the entire Town of Indian River Shores within the electric service area of FPL would be in the public interest because it would eliminate these problems.

Indian River Shores also alleges that changing service providers to FPL would give all Indian River Shores residents access to FPL's energy conservation programs and deployment of solar generation and smart meters that are not available by or through Vero Beach. The Petition alleges that transferring Indian River Shores' residents to FPL would provide customers with the

benefits of FPL's storm hardening initiatives, highly regarded management expertise, and high customer satisfaction ratings. Indian River Shores alleges that FPL is ready, willing, and able to serve all of the customers in Indian River Shores upon purchase of Vero Beach's electrical facilities in Indian River Shores for $13 million in cash, and that Indian River Shores' residents are overwhelmingly in favor of having FPL as the single electric provider within Indian River Shores. The Petition includes an alternative request for the Commission to treat the Petition as a complaint against Vero Beach for the same relief requested in the Petition. Indian River Shores also asks the Commission to conduct a service hearing in Indian River Shores so that the Commission can hear directly from residents.

On March 22, 2016, FPL filed a Petition to Intervene. FPL agrees with Indian River Shores' statement that FPL is ready, willing, and able to serve the additional portion of Indian River Shores if the Commission were to grant the Petition's request and assuming reasonable terms were reached for the acquisition of Vero Beach's electric facilities in that area.

On March 24, 2016, Vero Beach filed a Motion to Dismiss Indian River Shores' Petition for Modification of Territorial Order and Alternative Complaint (Motion to Dismiss) and a Motion to Intervene or, in the alternative, if the Petition is treated as a complaint, to be named a party. Vero Beach argues that the Petition should be dismissed on the grounds that: (1) Indian River Shores lacks standing because it has not alleged any facts that constitute cognizable injury in fact or any injury within the zone of interests to be protected by the Commission's statutes applicable to territorial matters and its related Grid Bill jurisdiction; (2) the alleged changed circumstances have nothing to do with the Commission's territorial statutes or rules, or with either the territorial agreements or the Territorial Orders that Indian River Shores wants the Commission to modify; (3) the Petition fails to meet the pleading requirements of Rule 28-106.201, F.A.C.; and (4) the Petition is barred by Florida's doctrine of administrative finality. Vero Beach argues that Indian River Shores' alternative request that the Petition be treated as a complaint should be denied for failure to comply with the Rule 25-22.036, F.A.C., pleading requirements for complaints. Vero Beach states that if the Commission does not grant the Motion to Dismiss, Vero Beach will demand strict proof of each and every factual assertion in the Petition and will insist on all of its rights pursuant to Chapter 120, F.S., to protect the interests of Vero Beach and all of its electric customers.

On April 7, 2016, Indian River Shores filed its Response in Opposition and Motion to Strike Portions of the City of Vero Beach's Motion to Dismiss. On April 14, 2016, Vero Beach filed its Response in Opposition to Indian River Shores' Motion to Strike. Oral argument was not requested on the Motion to Strike or Motion to Dismiss. Indian River Shores states that it did not request oral argument on the Motion to Dismiss because it was not certain whether oral argument would be beneficial to the Commission, but asks that it be allowed to request participation at the Agenda Conference following its review of the Staff Recommendation.

This recommendation addresses the Motions to Intervene, Vero Beach's Motion to Dismiss, Indian River Shores' Motion to Strike, and Indian River Shores' Petition. The Commission has jurisdiction pursuant to Sections 120.569, 120.57, and 366.04, F.S.

Discussion of Issues

Issue 1: Should the Commission grant the City of Vero Beach's Motion to Intervene and Florida Power & Light Company's Petition to Intervene?

Recommendation: No. The Commission should deny Vero Beach's Motion to Intervene and FPL's Petition to Intervene because intervention is premature and unnecessary at this time. (Cowdery)

Staff Analysis: On March 4, 2016, Indian River Shores filed its Petition asking the Commission to modify the Territorial Orders between FPL and Vero Beach. On March 24, 2016, Vero Beach filed a Motion to Intervene, or in the alternative, a request to be named a party, pursuant to Chapters 120 and 366, F.S., and Rules 25-6.0441, 25-22.036, 25-22.039, 28-106.201, and 28-106.205, F.A.C. Vero Beach states that as the incumbent utility providing service pursuant to territorial agreements between FPL and Vero Beach approved by the Commission pursuant to the Commission's Territorial Orders at issue in the Petition, Vero Beach's substantial interests will be directly affected by the issues raised in the docket. Vero Beach requests intervenor status so that it may file responsive pleadings and otherwise fully participate in Docket No. 160049-EU.

On March 22, 2016, FPL filed a Petition to Intervene pursuant to Chapters 120 and 366, F.S., and Rules 25-22.039 and 28-106.201, F.A.C. FPL alleges that it is clear on the face of the Petition that FPL's substantial interests will be determined by the Commission's decision in this proceeding because Indian River Shores has requested modification to the order approving FPL's territorial agreement with Vero Beach based on changed legal circumstances. FPL states that Indian River Shores has specifically requested the Commission to augment FPL's service area approved in the Territorial Order by placing all of Indian River Shores within the electric service area of FPL.

Issues 2-4 address motions filed in this docket. Although oral argument has not been requested on the motions, it is within the Commission's discretion to allow participation at the Agenda Conference. Staff is recommending in Issue 5 that the Petition requesting modification of the Territorial Orders be issued as a proposed agency action (PAA). Interested persons may participate at the Agenda Conference on Issue 5 pursuant to Rule 25-22.0021(2), F.A.C. The Commission invites broad participation in PAA proceedings in order to better inform itself of the scope and implications of its decisions. *See In re: Application for increase in water and wastewater rates in Pasco County by Labrador Utilities, Inc.*, Order No. PSC-12-0139-PCO-WS, issued March 26, 2012, Docket No. 110264-WS (Order Denying motion to Intervene in PAA proceeding), and Order No. PSC-14-0311-PCO-EM, issued June 13, 2014, in Docket No. 140059-EM, *In re: Notice of new municipal electric service provider and petition for waiver of Rule 25-9.044(2), by Babcock Ranch Community Independent Special District.* Vero Beach may participate fully in this proceeding, including filing its motion to dismiss and having it considered by the Commission, without intervening in this PAA proceeding.

Further, substantially affected persons will have the opportunity to request a hearing pursuant to Sections 120.569 and 120.57, F.S., once the Commission's PAA Order is issued. For

the reasons explained above, formal intervention by Vero Beach and FPL pursuant to Chapter 120, F.S., is premature and unnecessary at this time. Staff therefore recommends that the Commission deny Vero Beach's Motion to Intervene and FPL's Petition to Intervene.

Issue 2: Should the Commission grant Vero Beach's Motion to Dismiss the Petition for failure to meet the pleading requirements of Rule 28-106.201, F.A.C.?

Recommendation: No. The Commission should deny the Motion to Dismiss the Petition for failing to meet pleading requirements because the Petition is in substantial compliance with Rule 28-106.201, F.A.C. (Cowdery)

Staff Analysis:

Legal Standard

Indian River Shores' filed its Petition pursuant to Sections 120.57 and 366.04, F.S. Sections 120.569 and 120.57, F.S., apply in all proceedings in which the substantial interests of a party are determined by an agency. Unless otherwise provided by law, a petition or request for hearing must include all items required by Rule 28-106.201, F.A.C., if the hearing involves disputed issues of material fact. A petition or request for hearing must include all items required by Rule 28-106.301, F.A.C., if the hearing does not involve disputed issues of material fact. A petition filed under Chapter 120, F.S., that is in substantial compliance with the applicable uniform rule requirements need not be dismissed.

Arguments of Vero Beach and Indian River Shores

Vero Beach argues that the Petition should be dismissed because although the Petition purports to be filed pursuant to Section 120.57, F.S., it fails to meet the minimum pleading requirements of Rule 28-106.201(2), F.A.C. Specifically, Vero Beach alleges that the Petition fails to identify disputed issues of material fact, a statement of ultimate facts alleged, and an explanation of why Indian River Shores is entitled to the relief requested under specific statutes, rules, or orders of the Commission.

Indian River Shores asserts that it has sufficiently pled a claim for relief. Indian River Shores argues that Rule 28-106.201, F.A.C., does not apply since the Petition is not challenging proposed agency action. Indian River Shores states that the Petition seeks relief from the Commission pursuant to Section 366.04, F.S., and that the Florida Supreme Court expressly recognized in *Peoples Gas System, Inc. v. Mason*, 187 So. 2d 335, 339 (Fla. 1966), that the Commission may withdraw or modify its approval of a service area agreement, or other order, in proper proceedings initiated by it or even an interested member of the public.

Indian River Shores further argues that Rule 28-106.201, F.A.C., applies to requests for hearings on disputed issues of material fact, but that the Petition's material facts are meant to be undisputed. Indian River Shores argues that even if Rule 28-106.201, F.A.C., is applicable, Indian River Shores has substantially complied with pleading requirements because a plain reading of the Petition indicates that there are no disputed issues of material fact. Indian River Shores further argues that the Petition gives a detailed explanation of the changed legal circumstances that require modification of the Territorial Orders and gives a detailed explanation of the provisions of the Florida Constitution, statutes, and case law that require modification of the Territorial Orders.

Analysis

Staff believes that the Petition is in substantial compliance with the pleading requirements of the uniform rules and contains sufficient allegations to allow the Commission to rule on the Petition's request to modify the Territorial Orders. For these reasons, staff recommends that the Commission deny Vero Beach's Motion to Dismiss the Petition for failing to meet pleading requirements.

Issue 3: Should the Commission grant Indian River Shores' Motion to Strike?

Recommendation: No. The Commission should deny Indian River Shores' Motion to Strike. (Cowdery)

Staff Analysis:

Legal Standard

Rule 1.140(f), Florida Rules of Civil Procedure, states that a party may move to strike or the court may strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time. A motion to strike is appropriately directed to pleadings, not to motions to dismiss. Order No. PSC-04-0930-PCO, issued September 22, 2004, in Docket No. 040353-TP, *In re: Petition to review and cancel, or in the alternative immediately suspend or postpone, BellSouth Telecommunications, Inc.'s PreferredPack Plan tariffs, by Supra Telecommunications and Information Systems, Inc.* A motion to strike should only be granted if the pleadings are completely irrelevant and have no bearing on the decision. *Bay Colony Office Bldg. Joint Venture v. Wachovia Mortgage Co.*, 342 So. 2d 1005 (Fla. 5th DCA 1977).

Rule 1.140(f), Florida Rules of Civil Procedure, does not control in administrative proceedings. The Commission has used the rule as guidance when ruling on motions to strike, generally concerning evidentiary questions on testimony filed during the course of an administrative hearing proceeding. *E.g.* Order No. PSC-99-1809-PCO-WS, issued September 20, 1999, in Docket 971220-WS, *In re: Application for transfer of Certificates Nos. 592-W and 509-S from Cypress Lakes Associates, Ltd. to Cypress Lakes Utilities, Inc. in Polk County.*

Arguments of Vero Beach and Indian River Shores

Indian River Shores states that pursuant to Rule 1.140(f), Florida Rules of Civil Procedure, the Commission should ignore or strike the material in the Motion to Dismiss which is outside the four corners of the Petition as immaterial and impertinent. Indian River Shores asks the Commission to strike Vero Beach's factual allegations and arguments that the Petition's "real issue" is to challenge Vero Beach's utility rates. Indian River Shores does not specify what language of the Motion to Dismiss the Commission should strike. In addition, Indian River Shores argues that the Commission should strike Exhibit B to the Motion to Dismiss, a newspaper article, which Indian River Shores states that Vero Beach offers as purported evidence that the real purpose of the Petition is to challenge rates rather than enforce fundamental provisions of the Florida Constitution.

Vero Beach argues that Indian River Shores' Motion to Strike should be denied because the Commission is not bound by the Florida Rules of Civil Procedure unrelated to discovery. Vero Beach further argues that Rule 1.140(f), Florida Rules of Civil Procedure, provides for striking certain material from pleadings, and the rule does not apply because a motion to dismiss is not a pleading. Vero Beach also argues that a motion to strike language as immaterial should only be granted if the material is wholly irrelevant and can have no bearing on the equities and no influence on the decision. Vero Beach alleges that the material that Indian River Shores seeks to strike from the Motion to Dismiss, including Exhibit B, is clearly relevant to the equities, issues, and decision in this case and is therefore not subject to being stricken. Vero Beach further argues

that the Motion to Strike should be denied because it fails to identify with sufficient specificity the portions of the Motion to Dismiss that Indian River Shores seeks to strike.

Analysis

Staff believes that Indian River Shores' Motion to Strike is premature because this docket is in the proposed agency action stage and has not progressed to an evidentiary administrative hearing. Even if Indian River Shores' Motion to Strike were not premature, staff recommends that it be denied because a motion to strike is appropriately directed to pleadings, not to motions to dismiss.

Staff believes that the motion to strike should be denied on the additional ground that Vero Beach's arguments are not wholly immaterial to the Petition. It appears that Indian River Shores is asking the Commission to strike Vero Beach's entire legal argument that Indian River Shores lacks standing to ask for modification of the Territorial Orders on the basis that FPL has lower rates than Vero Beach. Vero Beach's arguments appear responsive to Indian River Shores' allegations that the Territorial Orders should be modified because of changed circumstances arising from Vero Beach's abuse of monopoly powers by "charging excessive rates." Finally, the Motion to Strike fails to identify specific portions of the Motion to Dismiss that it believes are immaterial or impertinent. For the reasons set forth above, staff recommends that the Commission deny Indian River Shores' Motion to Strike.

Issue 4: Should the City of Vero Beach's Motion to Dismiss Indian River Shores' Petition for lack of standing be granted?

Recommendation: The Commission should grant in part and deny in part Vero Beach's Motion to Dismiss for lack of standing. The Commission should grant the Motion to Dismiss on the grounds that Indian River Shores does not have standing to request modification of the Territorial Orders based on allegations of injury from abuses of monopoly powers and excessive rates. The Commission should also grant the Motion to Dismiss on the grounds that Indian River Shores does not have standing to represent Vero Beach's electric customers who reside in Indian River Shores. Dismissal on these grounds should be with prejudice because it conclusively appears from the face of the Petition that these defects in standing cannot be cured. The Commission should deny the Motion to Dismiss on the grounds that Indian River Shores has standing as a municipality to request modification of the Territorial Orders based on changed legal circumstances emanating from Article VIII, Section 2(c), Florida Constitution. (Cowdery)

Staff Analysis:

Legal Standard

For purposes of ruling on the Motion to Dismiss for lack of standing, the Commission must confine its review to the four corners of the Petition, draw all inferences in favor of the petitioner, and accept all well-pled allegations in the petition as true. *Chandler v. City of Greenacres*, 140 So. 3d 1080, 1083 (Fla. 4th DCA 2014). S*ee also Mid-Chattahoochee River Users v. Florida Department of Environmental Protection*, 948 So. 2d 794, 796 (Fla. 1st DCA 2006), *rev. denied*, 966 So. 2d 967 (Fla. 2007)(affirming agency's final order granting motion to dismiss petition for lack of standing under *Agrico*). Dismissal of a petition may be with prejudice if it appears from the face of the petition that the defect cannot be cured. Section 120.569(2)(c), F.S.

The Florida Supreme Court has stated that the Commission may modify its approval of a territorial agreement "in proper proceedings initiated by it, a party to the agreement, or even an interested member of the public." *Peoples Gas System,* 187 So. 2d at 339; *City of Homestead v. Beard*, 600 So. 2d 450, 453 n. 5 (Fla. 1992); *Public Service Commission v. Fuller*, 551 So. 2d 1210, 1212 (Fla. 1989). In order for Indian River Shores to have standing to receive a Section 120.57, F.S., hearing on its Petition, it must demonstrate: (1) that it will suffer injury in fact which is of sufficient immediacy to entitle it to a Section 120.569 and 120.57, F.S., hearing (degree of injury); and (2) that its substantial injury is of a type or nature that the proceeding is designed to protect (nature of injury). *Agrico Chemical Co., v. Department of Environmental Regulation*, 406 So. 2d 478, 472 (Fla. 2d DCA 1981), *rev. denied*, 415 So. 2d 1359 and 415 So. 2d 1361 (Fla. 1982). *See also Nuvox Communications, Inc. v. Edgar*, 958 So. 2d 920 (Fla. 2007)(affirming Commission order dismissing petitions with prejudice for lack of standing under *Agrico*); *Ameristeel Corp. v. Clark*, 691 So. 2d 473, 477 (Fla. 1997)(affirming Commission order dismissing petition protesting territorial order for lack of *Agrico* standing, finding that Ameristeel's claim concerning paying higher rates to FPL was not injury in fact entitling it to a Section 120.57, F.S., hearing). Although Indian River Shores must demonstrate that it will suffer injury in fact of sufficient immediacy to entitle it to a hearing, it does not have to establish that it

will prevail on the merits of its argument. *Palm Beach County Environmental Coalition v. Florida Department of Environmental Regulation*, 14 So. 3d 1076, 1078 (Fla. 4th DCA 2015).

The purpose of requiring a party to have standing to participate in an administrative proceeding is to ensure that a party has sufficient interest in the outcome to warrant a hearing and to assure that the party will adequately represent its asserted interests. In this regard, "the obvious intent of *Agrico* was to preclude parties from intervening in a proceeding where those parties' substantial interests are totally unrelated to the issues which are to be resolved in the administrative proceedings." *Prescription Partners, LLC v. State*, 109 So. 3d 1218, 1223 (Fla. 1st DCA 2013).

Staff recommends that the Motion to Dismiss be granted in part and denied in part. Staff's recommendation is discussed in more detail below.

Arguments of Vero Beach and Indian River Shores

Vero Beach's Motion to Dismiss

Vero Beach argues that the Petition should be dismissed for lack of standing because only persons whose substantial interests may or will be affected by action of the Commission may file a petition for an administrative hearing. Vero Beach alleges that in order to establish standing to initiate an administrative proceeding, a petitioner must demonstrate: (1) that the petitioner will suffer an injury in fact that is of sufficient immediacy to entitle it to a Section 120.57, F.S., hearing (degree of injury); and (2) that the petitioner's substantial injury is of a type or nature against which the proceeding is designed to protect (nature of injury). *Agrico*, 406 So. 2d at 472.

Vero Beach argues that the actual injury alleged in the Petition is that Vero Beach charges higher electric rates to customers in Indian River Shores than does FPL. Vero Beach alleges that Indian River Shores' interest in lower electric rates does not constitute an injury in fact of sufficient immediacy to establish grounds for *Agrico* standing because the change in the relationships between the rates of Vero Beach and the rates of FPL is not cognizable under the Commission's territorial statutes or its general Grid Bill authority.

Vero Beach argues that the Petition fails to allege any injury relative to the statutory or rule provision criteria for approving territorial agreements upon which the Territorial Orders were based, such as the reasonableness of the purchase price of any facilities being transferred; potential impacts on reliability; and the elimination of the potential uneconomic duplication of facilities. Likewise, Vero Beach argues that the Petition does not allege injury in fact relative to the statutory and rule provisions concerning territorial disputes. Vero Beach notes that even if Indian River Shores has alleged injury relative to the "customer preference" criterion of Rule 25-6.0441(2)(d), F.A.C., in that Indian River Shores has changed its mind because FPL's rates are now less than Vero Beach's rates, the Commission and the Florida Supreme Court have recognized on many occasions that customer preference – particularly for lower rates, but for other factors as well - is not cognizable as a matter of law. Additionally, Vero Beach argues that the Petition is deficient because it does not allege any injury relative to the Section 366.04(5), F.S., requirement that the Commission assure avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.

Vero Beach argues that Indian River Shores failed to allege any injury to any of the interests protected by the Commission's territorial and related Grid Bill statutes, Sections 366.04(2)(d)-(e) or 366.04(5), F.S., or Rule 25-6.0441, F.A.C., relating to Vero Beach's ability to serve, to the adequacy and reliability of Vero Beach's service, or to the avoidance of uneconomic duplication of facilities. Vero Beach argues that because the alleged injuries are outside the zone of interests to be protected by the Commission's territorial and related Grid Bill statutes that Indian River Shores does not meet the second requirement of *Agrico*.

In addition, Vero Beach argues that Indian River Shores lacks power, a legal basis, and standing to assert the interests of its citizens in a representative capacity, citing to Order No. 96-0768-PCO-WU, issued June 14, 1996, in Docket No. 960192-WU, *In Re: Application for a Limited Proceeding to Include Groundwater Development and Protection Costs in Rates in Martin County by Hobe Sound Water Company* (*Hobe Sound Order*). Vero Beach states that the *Hobe Sound Order* states that:

> [I]ntervention is not granted to the Town [of Jupiter Island] in a representational capacity on behalf of its residents and taxpayers. There is no authority cited in the motion to support such standing to intervene, and there is nothing in Chapter 120, Florida Statutes, to authorize a Town to intervene in administrative proceedings on behalf of its taxpayers.

Vero Beach argues that Indian River Shores' allegation of injury to its purported constitutional right to be protected from Vero Beach providing service in Indian River Shores without Indian River Shores' consent fails to demonstrate injury in fact. Vero Beach argues that this is because the allegation of injury is speculative, affords no grounds for modification of the Territorial Orders, and is only being alleged as an injury because Vero Beach's electric rates are higher than those of FPL.

Indian River Shores' Response to Motion to Dismiss

Indian River Shores argues that the Motion to Dismiss should be denied because Vero Beach has not and cannot meet the legal standard for dismissal, noting that the Commission has recognized that dismissal is a drastic remedy and is only appropriate when the legal standard has been clearly met. Indian River Shores states that the Petition is not a simple demand by a customer to be served by a particular utility of its choosing, and, instead, is complaining about Vero Beach's unconstitutional exercise of extra-territorial powers in Indian River Shores' corporate limits and the particular unregulated monopolistic abuses arising out of that unconstitutional act.

Indian River Shores argues that the *Agrico* standing test does not apply because Indian River Shores has standing to seek modification of the Territorial Orders as an interested member of the public under *Peoples Gas*, 187 So. 2d at 339; *Fuller*, 551 So. 2d 1210 at 1212; and *City of Homestead*, 600 So. 2d at 453 n. 5. The Petition alleges that if *Agrico* applies, Indian River Shores meets the first requirement because it will suffer substantial and immediate injury by Vero Beach using its unregulated monopoly electric service area within Indian River Shores to extract monopolistic profits from Indian River Shores' residents, resulting in excessive rates for lower quality service, with profits supporting non-utility operations of Vero Beach and reducing the tax burden on Vero Beach residents. Indian River Shores argues that it has standing because

it has a constitutional right to be protected from Vero Beach providing electric service within Indian River Shores without consent.

Indian River Shores argues that it has met the second prong of the *Agrico* test because the Petition alleges injury of a type or nature which this proceeding to modify a territorial order is designed to protect. Indian River Shores argues that the Florida Supreme Court has emphasized that in order for a territorial agreement to be in the public interest, parties to such an agreement must be subject to a statutory regulatory regime sufficient to protect consumers from monopoly abuses because a utility's power to fix the price and thereby injure the public and the danger of deterioration in service quality are the inevitable evils of unregulated monopolies. Indian River Shores argues that the Commission has a duty to modify the Territorial Order to protect Indian River Shores and its residents from "monopoly abuses" to extract "monopolistic profits" in the form of high rates. Indian River Shores objects to Vero Beach's use of utility revenues as general revenue to fund city operations unrelated to electric utility operations. Indian River Shores argues that the active supervision that the Commission must exercise to protect against monopoly abuses is particularly needed in this very unique situation where Vero Beach is serving extraterritorially and exerting unregulated monopoly powers within the corporate limits of another equally independent municipality.

Indian River Shores states that Vero Beach's arguments that Indian River Shores has waived consent and that administrative finality bars the Petition are affirmative defenses that cannot be used in ruling on the Motion to Dismiss and, in addition, are without merit. Indian River Shores states that even if Indian River Shores lacks standing to bring this Petition, the Commission should address on its own motion the changed legal circumstances that will render Vero Beach's provision of electric service to Indian River Shores unconstitutional upon expiration of the Franchise Agreement.

Indian River Shores argues that it has standing as a municipality to represent the interests of its residents because it has an obligation to protect them from Vero Beach's unconstitutional exercise of unregulated extraterritorial monopoly powers within Indian River Shores. Indian River Shores distinguishes the *Hobe Sound Order* as being a rate case with nothing to do with assertion of constitution protections against improper encroachments by one municipality within the boundaries of another. Indian River Shores notes that in the *Hobe Sound Order,* although the Commission determined that the municipality did not have standing to represent its citizens, the municipality did have standing to intervene as a customer of the utility. Indian River Shores states that even if it cannot legally represent the interests of its residents, it has standing as a customer of Vero Beach.

Analysis

The Commission should grant the Motion to Dismiss, in part.

The Petition's allegations that Indian River Shores is harmed by excessive rates caused by abuses of monopoly power, even if taken as true, do not establish Indian River Shores' standing to request modification of the Territorial Orders in order to change service providers. It is established law that "[a]n individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself," *Story v. Mayo,* 217 So.

2d 304, 307 (Fla. 1968), *cert. denied,* 395 U.S. 909 (1969). In the Commission's exercise of jurisdiction over territorial agreements, larger policies are at stake than one customer's self-interest. *Lee County Electric Co-op v. Marks*, 501 So. 2d 585, 587 (Fla. 1987)(stating that those larger policies must be enforced and safeguarded by the Commission). An allegation of a significant price differential between two electric utility providers does not give an existing customer of one utility a substantial interest in the outcome of the territorial agreement proceeding between those providers. *Ameristeel*, 691 So. 2d at 478 (affirming the Commission's dismissal of Ameristeel's petition protesting territorial order for lack of standing under the *Agrico* test). *See also* Order 9259, issued Feb 26, 1980, in Docket No. 79063-EU, *In re: Complaint of J. and L. Accursio, et al., v. Florida Power and Light Company and City of Homestead* (where the Commission dismissed a petition to "enjoin enforcement" of a 12 year old territorial order, primarily because of rate issues, because the petition did not sufficiently allege changes in circumstances), *cert. denied, Accursio v. Mayo*, 389 So. 2d 1002 (Fla. 1980).

Further, the Commission does not have jurisdiction over municipal rates. In the 1974 Grid Bill,[1] as part of the Legislature's regulatory regime over electric utilities, the Commission was given limited regulatory jurisdiction over municipal electric utilities. *See* 366.04(2), F.S. The Legislature gave the Commission authority over municipalities to prescribe uniform systems and classifications of accounts; to prescribe a rate structure for all electric utilities; to require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes; to approve territorial agreements; to resolve territorial disputes; and to prescribe and require the filing of periodic reports and other data. The Legislature did not give the Commission jurisdiction over the actual rates charged by a municipal electric utility. *Lewis v. Public Service Commission*, 463 So. 2d 227 (Fla. 1985)(stating that the Commission's jurisdiction over rate structure does not include jurisdiction over the actual rates charged by a municipal electric utility). Because the Commission lacks this jurisdiction, it does not have authority to determine what Vero Beach's electric rates should be or whether they are "too high" compared to FPL's current rates.

The Florida Supreme Court has stated that as part of Florida's legislatively constructed regulatory regime, if customers of municipal electric utilities have complaints of "excessive rates or inadequate service their appeal under Florida law is to the courts or the municipal council." *Story,* 217 So. 2d at 308. In apparent recognition that the circuit court is the appropriate forum in which it must seek rate relief, Indian River Shores filed a lawsuit against Vero Beach in circuit court, seeking relief from what it alleges are unreasonable, oppressive, and inequitable electric rates. *See* Exhibit B to Order No. PSC-16-0093-FOF-EU, issued March 4, 2016, in Docket No. 160013-EU, *In re: Petition for declaratory statement regarding the Florida Public Service Commission's jurisdiction to adjudicate the Town of Indian River Shores' constitutional rights.*

The Petition also generally alleges that the Commission has a duty to protect Indian River Shores and its residents from "other anticompetitive behavior" and "other monopoly abuses." Indian

[1] Staff notes that the Grid Bill codified the Commission's authority to approve and review territorial agreements involving investor-owned utilities and expressly granted the Commission jurisdiction over rural electric cooperatives and municipal electric utilities for approving territorial agreements and resolving territorial disputes. See Richard C. Bellak and Martha Carter Brown, Drawing the Lines: Statewide Territorial Boundaries for Public Utilities in Florida, 19 Fla. St. L. Rev. 407, 413 (1991).

River Shores' Response to the Motion to Dismiss specifically asks the Commission to "redraw the monopoly service area boundaries in a manner that will comply with the antitrust laws" by replacing Vero Beach with FPL as service provider. These statements are misleading. The very Commission proceedings that approve territorial agreements or resolve disputes by Commission order are the actions that cause territorial agreements to "comply with the antitrust laws." This is because the Florida Legislature has through Section 366.04(2), F.S., created a "clearly articulated and affirmatively expressed state policy for establishing electric utility territorial boundaries" resulting in state action immunity for utilities from antitrust liability. *See Union Carbide Corp. v. Florida Power & Light Co.*, 1993 U.S. Dist. LEXIS 21203 (M.D. Fla. 1993). As the Commission stated in affirming its authority to enforce its territorial orders:

> We must demonstrate continued, meaningful, active supervision of the State's policy to displace competition between electric utilities throughout the state by approving — and enforcing — territorial agreements and resolving disputes. (emphasis added)

Order No. PSC-13-0207-PAA-EM, issued May 21, 2013, in Docket No. 120054-EM, *In re: Complaint of Robert D. Reynolds and Julianne C. Reynolds against Utility Board of the City of Key West, Florida d/b/a Keys Energy Services regarding extending commercial electrical transmission lines to each property owner of No Name Key, Florida*, 2013 Fla. PUC LEXIS 128, *53.

Further, other than making general statements concerning anticompetitive behavior, the Petition does not allege any specific anticompetitive behavior or violations of antitrust laws by Vero Beach. Even if specific antitrust violations were alleged, the Commission does not have jurisdiction to adjudicate antitrust violations, and the Petition does not argue otherwise.

The Petition's complaint that the Territorial Orders result in Indian River Shores residents being disenfranchised from voting for members of the Vero Beach City Council is not a circumstance that has changed since the Territorial Orders were issued, and therefore does not form a basis for modifying the Territorial Orders. For the same reason, there is no merit to the Petition's argument that the Territorial Orders should be modified because FPL is regulated as to rates by the Commission and Vero Beach is not. *See Storey*, 217 So. 2d at 307-308 (where, in affirming the Commission's territorial order, the Court did not accept the customers' argument that the order should be reversed because the impact of the approved territorial agreement was to force them to take service from an unregulated city utility with inferior rates and service, instead of receiving service from a regulated utility.)

In order to act in a representative capacity on behalf of its residents, the Legislature has to grant that power to Indian River Shores. *See Ormond Beach v. Mayo*, 330 So. 2d 524 (Fla. 1st DCA 1976), *cert. denied,* 341 So. 2d 1083 (Fla. 1976). Staff is unaware of any grant of statutory authority to Indian River Shores that would allow it to represent City electric customers located in Indian River Shores on any of the issues raised in its Petition. The Commission has previously denied a municipality intervention to act in a representational capacity on behalf of its residents and taxpayers on the basis that there is nothing in Chapter 120, F.S., to authorize a town to intervene in administrative proceedings on behalf of its taxpayers. *Hobe Sound Order*. However,

staff notes that interested persons may participate in the Agenda Conference on proposed agency action items.

For the reasons set forth above, staff recommends that the Commission grant Vero Beach's Motion to Dismiss, in part, on the grounds that Indian River Shores does not have standing to request modification of the Territorial Orders based on its allegations of injury from abuses of monopoly powers and excessive rates. Further, Indian River Shores lacks standing to request modification of the Territorial Orders in a representative capacity on behalf of Vero Beach's electric customers who reside in Indian River Shores. Staff recommends that the Commission grant the Motion to Dismiss on these grounds with prejudice because it conclusively appears from the face of the Petition that the defects as to standing cannot be cured.

The Commission should deny the Motion to Dismiss, in part.

Staff is of the opinion that the question of whether Indian River Shores' consent must be given in order for Vero Beach to continue to provide electric service within the municipal boundaries of Indian River Shores is a legal question separate and apart from Indian River Shores' allegations that rates are too high. Staff believes that Indian River Shores' legal argument that its consent is required by Section VIII, Article (2)(c), Florida Constitution, in order for Vero Beach to provide service within Indian River Shores forms a basis for standing. Standing may be based upon an interest created by the Constitution or a statute. *Florida Medical Association v. Department of Professional Regulation*, 426 So. 2d 1112, 1116, 1118 (Fla. 1st DCA 1983)(noting that zone of interest test of *Agrico* is met if standing is based on constitutional grounds).

It is staff's opinion that Indian River Shores' has established *Agrico* standing by alleging injury to its substantial interests as a municipality by arguing that it has a constitutional right to require the Commission to modify the Territorial Order when the Franchise Agreement and Indian River Shores' consent expire on November 6, 2016. Staff is unaware of any Commission order or Florida court case that directly addresses this question. Indian River Shores' allegations demonstrate that Indian River Shores as a municipality has sufficient interest in representing its asserted interests. Staff is also of the opinion that Indian River Shores' alleged substantial interests relate to a question appropriately addressed by the Commission, that is, whether there has been a changed circumstance that would require the Commission to modify the Territorial Orders and replace Vero Beach with FPL as electric service provider within the municipal boundaries of Indian River Shores.

Staff believes that Vero Beach's argument that the Florida Constitution does not afford any basis for modification of the Territorial Orders, that Indian River Shores waived consent, and arguments concerning the doctrine of administrative finality, are all arguments that go to the merits of Indian River Shores' request for modification of the Territorial Orders. Arguments on the merits are addressed in Issue 4, but they do not support denying Indian River Shores standing to request modification of the Territorial Orders based on changed circumstances emanating from the Florida Constitution. For the reasons explained above, staff recommends that the Commission deny Vero Beach's Motion to Dismiss, in part, and find that Indian River Shores has standing as a municipality to request modification of the Territorial Orders based on changed legal circumstances emanating from Article VIII, Section 2(c), of the Florida Constitution.

Issue 5: Should the Commission grant Indian River Shores' Petition for Modification of Territorial Order Based on Changed Legal Circumstances Emanating from Article VIII, Section 2(c) of the Florida Constitution?

Recommendation: No. The Commission should deny on the merits Indian River Shores' Petition for Modification of Territorial Order Based on Changed Legal Circumstances Emanating from Article VIII, Section 2(c) of the Florida Constitution because: (1) it fails to demonstrate that modification of the Territorial Orders is necessary in the public interest due to changed circumstances not present in the proceedings which led to the Territorial Orders; and (2) it fails to show that modification would not be detrimental to the public interest. (Cowdery, Draper)

Staff Analysis:

Legal Standard

In 1972, when the Commission first approved the territorial agreement between FPL and Vero Beach, the Florida Supreme Court had already established that the Commission had implied authority under Chapter 366, F.S., to approve territorial agreements between electric utilities. *City Gas Co. v. Peoples Gas System, Inc.*, 182 So. 2d 429, 436 (Fla. 1965). In 1974, the Florida Legislature codified this authority in Section 366.04, F.S., as part of the Grid Bill, Chapter 74-196, Laws of Florida.

Section 366.04, F.S., is the general law that gives the Commission exclusive and superior jurisdiction over territorial agreements between electric utilities. Section 366.04(2), F.S., gives the Commission the power to approve territorial agreements and to resolve any territorial disputes between and among municipal electric utilities and other electric utilities under its 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. Through territorial orders issued under this authority, the Commission, not municipalities, gets to decide which electric utility serves a given area. A franchise agreement between a local government and an electric utility cannot override a territorial order. *See Board of County Commissioners Indian River County, Florida v. Art Graham, etc., et al.*, 41 Fla. L. Weekly S 228 (Fla. 2016)(rejecting the argument that counties may use franchise agreements to choose their electric service provider because that would let counties do indirectly what the Commission's exclusive and superior jurisdiction over territorial agreements precludes them from doing directly).

The Territorial Orders give Vero Beach the right and obligation, as provided in Section 366.04, F.S., to supply electric service to the territory described, which includes the portion of Indian River Shores lying south of Old Winter Beach Road. *See Indian River County*, 41 Fla. L. Weekly S 228 (affirming the Commission's order that Vero Beach "has the right and obligation to

continue to provide retail electric service in the territory described in the Territorial Orders upon expiration of the Franchise Agreement" between Vero Beach and Indian River County).

The Territorial Orders are final orders of the Commission subject to the doctrine of administrative finality. Under that doctrine, the Commission has limited, inherent authority to modify its final orders in a manner that accords requisite finality to the orders, while still affording the Commission ample authority to act in the public's interest. *Peoples Gas*, 187 So. 2d at 339. The Commission may only modify a territorial order after proper notice and hearing, and upon a specific finding based on adequate proof that such modification or withdrawal of approval is necessary in the public interest because of changed conditions or other circumstances not present in the proceedings which led to the order being modified. *Id.*

The public interest is the ultimate measuring stick to guide the Commission in its decisions. *Gulf Coast Electric Cooperative v. Johnson*, 727 So. 2d 259, 264 (Fla. 1999)(affirming the Commission's denial of a request to establish territorial boundaries). In exercising its jurisdiction over the Territorial Orders and determining what is in the public interest, the Commission must consider all affected customers, both those transferred and those not transferred, and ensure that any modification works no detriment to the public interest as a whole. *See Utilities Commission of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731, 732-33 (Fla. 1985).

Arguments of Indian River Shores and Vero Beach

Indian River Shores' arguments in support of modification of the Territorial Orders based on Article VIII, Section 2(c), Florida Constitution

Indian River Shores requests that the Commission modify the Territorial Orders by placing the entire municipality of Indian River Shores within FPL's service area. This would result in the transfer of approximately 3000 Vero Beach electric customers located south of Old Winter Beach Road to FPL which currently serves approximately 739 Indian River Shores residents located north of Old Winter Beach Road. Indian River Shores argues that this modification of the Territorial Orders is required pursuant to *Peoples Gas*, 187 So. 2d at 339, because fundamental legal circumstances have changed since the Commission last approved an amendment to the territorial agreement between FPL and Vero Beach in 1988. The changed legal circumstance alleged by Indian River Shores is that Vero Beach will no longer have Indian River Shores' consent to provide electric service within Indian River Shores upon expiration of the Franchise Agreement on November 6, 2016.

Indian River Shores argues that its consent is required because Article VIII, Section 2(c), Florida Constitution, states that "exercise of extra-territorial powers by municipalities shall be as provided by general or special law." Indian River Shores interprets this constitutional phrase to mean that the Legislature must grant the power to provide electricity outside Vero Beach's municipal borders directly to Vero Beach. Indian River Shores alleges that because the Legislature gave the Commission Section 366.04, F.S., authority over territorial agreements, and not Vero Beach, Vero Beach is not providing electric service in Indian River Shores as provided by general law. Indian River Shores alleges that because Vero Beach is not providing electric service in Indian River Shores as provided by general law, it requires Indian River Shores'

consent to do so. Indian River Shores argues that it gave Vero Beach this consent in the 1968 Contract and in the 1986 Franchise Agreement but that Vero Beach will lose this consent when the Franchise Agreement expires on November 6, 2016. Indian River Shores maintains that Vero Beach will be in violation of the Florida Constitution if it provides electric service within Indian River Shores without Indian River Shores' consent.

Indian River Shores argues that the Commission has acknowledged that an order approving a territorial agreement between a municipal utility and an investor-owned utility does not provide a municipal utility the inherent statutory authority to provide electric service outside its municipal boundaries. Indian River Shores alleges that in *In re: Joint petition for approval to amend territorial agreement between Progress Energy Florida, Inc. and Reedy Creek Improvement District*, Order No. PSC-10-0206-PAA-EU, issued Apr. 5, 2010, Docket No. 090530-EU (*Reedy Creek Order*), when a development area was de-annexed from the Reedy Creek Improvement District, the Commission "saw the need" to modify the territorial agreement because pursuant to its charter, Reedy Creek Improvement District cannot furnish retail electric power outside of its boundaries.

Indian River Shores argues that because its consent is required, the Commission as a matter of law must modify the Territorial Orders as requested in the Petition. Indian River Shores maintains that the Commission may not consider any of the factors relative to territorial disputes in Section 366.04(2)(e), F.S., and Rule 25-6.0441, F.A.C., or to territorial agreements in Section 366.04(2)(d), F.S., and Rule 25-6.0440, F.A.C. Indian River Shores states that it is not asking the Commission to redraw a service territory boundary between two utilities based on a statutory or rule criteria, factor-by-factor determination of which utility is best suited to serve considering the nature of the disputed area, ability of competing utilities to provide reliable service, their costs to provide service and similar evidence, and the avoidance of uneconomic duplication of distribution and subtransmission facilities. Indian River Shores alleges that even if territorial dispute criteria are relevant, the thrust of the Petition is its challenge to Vero Beach's legal ability to serve, which is one of those criteria.

Vero Beach's arguments in opposition to modification of the Territorial Orders

Vero Beach argues that the Petition should be dismissed as being barred by the doctrine of administrative finality because it does not meet the standard for modifying the Territorial Orders. Vero Beach states that the doctrine of administrative finality is one of fairness, based on the premise that the parties and the public may rely on Commission orders. Vero Beach further states that the Commission may only modify a territorial order upon a "specific finding based on adequate proof that such modification or withdrawal of approval is necessary in the public interest because of changed conditions or other circumstances not present in the proceedings which led to the order being modified." *Peoples Gas*, 187 So. 2d at 339. Vero Beach alleges that Indian River Shores' alleged changed circumstance -- expiration of the Franchise Agreement and Indian River Shores' withdrawal of its consent for Vero Beach to operate in Indian River Shores -- is not a changed circumstance relevant to the statutory criteria and factors that the Commission considered in approving the Vero Beach-FPL territorial agreements through the Territorial Orders. Vero Beach states that the Commission specifically found in the Territorial Orders that each version of the Vero Beach-FPL territorial agreements was in the public interest and

consistent with the Commission's Grid Bill authority to avoid uneconomic duplication of facilities.

Vero Beach further argues that there is no requirement and nothing concerning the need for Indian River Shores' consent in any of the statutes or rules relating to the Commission's Grid Bill jurisdiction, the territorial agreements between FPL and Vero Beach, or in the Territorial Orders. Vero Beach maintains that Indian River Shores' consent – if it existed – never had anything to do with the FPL-Vero Beach territorial agreements or Territorial Orders. Vero Beach alleges that it has been providing electricity to Indian River Shores for at least 63 years and that if Indian River Shores ever had a constitutional right to be protected against Vero Beaches' exercise of its power to provide electric service in Indian River Shores, Indian River Shores waived that right many years ago.

Vero Beach argues that in reliance on the Commission's Territorial Orders and Chapter 366, F.S., other legal authority, and the actions of Indian River County, Vero Beach has installed, operated, and maintained its electric system facilities for the purpose of providing electric service to its service territory. Vero Beach states that in fulfilling this necessary public purpose, it has 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.

Vero Beach argues that Indian River Shores' list of public interest considerations for modifying the Territorial Orders has nothing to do with the Commission's Section 366.04(2), F.S., territorial jurisdiction or its Section 366.04(5), F.S., Grid Bill responsibilities. Instead, Vero Beach alleges, the list is merely a pretextual claim based solely on Indian River Shores' interest and not on the general public interest. Vero Beach further argues that the Petition's list of public interest considerations ignores the impacts that the requested modification to the Territorial Orders would have on the 32,000 customers served by Vero Beach outside Indian River Shores.

Analysis

The Petition does not show a change in circumstances that led to issuance of the Territorial Orders.

It is staff's opinion that Article VIII, Section 2(c) of the Florida Constitution did not require the Commission to obtain the consent of Indian River Shores in 1972 or subsequent proceedings as a prerequisite, or condition precedent, to the Commission approving the territorial agreements between FPL and Vero Beach. Article VIII, Section 2, Municipalities, states:

> (c) ANNEXATION. Municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law.

A plain reading of Article VIII, Section 2(c) is that Vero Beach's authority to supply electricity outside its boundaries must come from general or special law. It is staff's opinion that Vero Beach is providing electric service to customers in the territory approved in the Territorial Orders as provided by general law, Section 366.04, F.S. There is no additional constitutional

requirement in Article VIII, Section 2(c) for the Commission to obtain Indian River Shores' consent as a condition precedent to approving the territorial agreements between FPL and Vero Beach. Likewise, Section 366.04, F.S., contains no requirement for the Commission to obtain Indian River Shores' consent as a condition precedent to approving the territorial agreements between FPL and Vero Beach in order for Vero Beach to provide electric service within Indian River Shores.

Staff disagrees with Indian River Shores' argument that the constitutional phrase "exercise of extra-territorial powers by municipalities shall be as provided by general or special law" means that Section 366.04(2)(d), F.S., is not general law authorizing Vero Beach to provide electric service in Indian River Shores pursuant to the Territorial Orders. In *Ford v. Orlando Utilities Commission*, 629 So. 2d 845, 847 (Fla. 1994), relied upon by Indian River Shores, the Court found that where a municipality locates an electrical generating plant on its property in another county to supply electricity to that municipality's residents, but does not supply any electrical power to the county residents, the property is exempt from ad valorem taxation. *Ford* found that the Orlando Utilities Commission had statutory power to acquire and operate a utility plant in a neighboring county and that production of energy was a municipal purpose, and therefore it was exempt from taxation by the neighboring county. *Ford* does not address or support Indian River Shores' argument that Section 366.04, F.S., is not the general law pursuant to which Vero Beach is providing electric service to Indian River Shores.

Staff also disagrees with Indian River Shores' characterization that the Commission has acknowledged that a territorial order does not provide a municipal utility the inherent statutory authority to provide electric service outside its municipal boundaries. In the *Reedy Creek Order*, cited by Indian River Shores for this proposition, a joint petition to amend a territorial agreement was brought to the Commission for approval in order to reflect de-annexation of a planned development area from the Reedy Creek Improvement District political boundary and to avoid any potential for uneconomic duplication of electric facilities. The Commission approved the petition pursuant to Section 366.04(2)(d), F.S., giving consideration to factors of Rule 25-6.0440(2), F.A.C., and noting that there were no existing customers affected by the proposed territory amendment. The Commission order stated that the joint petition alleged that Reedy Creek Improvement District, pursuant to its charter, could not furnish retail electric power outside of its boundary. The Commission found that the amended territorial agreement appeared to eliminate existing or potential uneconomic duplication of facilities and did not cause a decrease in the reliability of electric service to existing or future ratepayers. There was no issue before the Commission concerning whether a municipality providing service within the boundaries of another municipality under a territorial order is considered to be providing service pursuant to general law.

Rule 25-6.0441(2)(d), F.A.C., provides that in resolving territorial disputes, the Commission may consider customer preference if all other factors are substantially equal. Rule 25-6.0442, F.A.C., provides that any substantially affected customer shall have the right to intervene in proceedings to approve a territorial agreement or resolve a territorial dispute. However, Indian River Shores did not participate in any of the four FPL – Vero Beach territorial agreement dockets before the Commission. Further, it does not appear that any issue was raised in any of those proceedings concerning the need for Indian River Shores' consent as a condition precedent to the

Commission approving the territorial agreements. In addition, neither the 1968 Contract nor the Franchise Agreement makes any reference to Article VIII, Section 2(c), nor do they contain any language that Indian River Shores is giving temporary consent to Vero Beach as a condition precedent to the Commission approving the territorial agreements between FPL and Vero Beach.

Even if the 1968 Contract or the Franchise Agreement were interpreted as containing language whereby Indian River Shores gave its temporary consent to Vero Beach to provide electric service within Indian River Shores, that language would not affect the validity of the Territorial Orders. In the case of conflict between Commission and municipality jurisdiction, the Commission's lawful orders shall in each instance prevail. *See Indian River County*, 41 Fla. L. Weekly S 228 (citing to Section 366.04(1), F.S.). Expiration of the Franchise Agreement on November 6, 2016, will not affect the validity of the Territorial Orders. Vero Beach will continue to have the right and obligation to provide electric service to the entire territory within the boundaries established in the Territorial Orders, including that portion of Indian River Shores located south of Old Winter Beach Road. *See Id.* (affirming the Commission's order declaring that upon expiration of the franchise agreement between Vero Beach and Indian River County on March 4, 2017, Vero Beach has the right and obligation to continue to provide retail electric service in the territory described in the Territorial Orders).

Because Indian River Shores' consent was not required by the Florida Constitution or Section 366.04, F.S., for the Commission's approval of the Vero Beach – FPL territorial agreements, Indian River Shores' alleged withdrawal of consent is not a change in any circumstance that was considered or relied upon by the Commission in issuing the Territorial Orders. For this reason, Indian River Shores' alleged withdrawal of consent when the Franchise Agreement expires on November 6, 2016, is not a change in circumstance requiring modification of the Territorial Orders.

The Petition fails to show that modifying the Territorial Orders is necessary to the public interest or that it would not be detrimental to the public interest.

Even if the issue of Indian River Shores' consent could be considered a changed circumstance supporting modification of the Territorial Orders, the Territorial Orders may only be modified if necessary to the public interest. Staff disagrees with Indian River Shores' argument that the Commission must modify the Territorial Orders without giving any consideration to the Commission's legislatively mandated responsibility over territorial agreements under Section 366.04(2), F.S. It is staff's opinion that in order to modify the Territorial Orders as requested by Indian River Shores, by transferring the territory containing approximately 3000 customers located south of Old Winter Beach Road from Vero Beach to FPL, the Commission must examine the factors normally considered under Section 366.04(2)(d) and (e), F.S., and Rules 25-6.0440 and 25-6.0441, F.A.C.

Under these statutes and rules, in order to determine whether modification of the Territorial Orders is in public interest, the Commission would need to consider criteria such as the terms and conditions pertaining to implementation of the transfer of customers, information with respect to affected customers, the reasonableness of the purchase price of any facilities being transferred, the effect of the transfer on reliability of electrical service to the existing or future

ratepayers of FPL and Vero Beach, the reasonable likelihood that the modification will eliminate existing or potential uneconomic duplication of facilities, the capability of FPL and Vero Beach to provide reliable electric service within the disputed area with their existing facilities, and the cost to FPL and Vero Beach to provide distribution and subtransmission facilities to the disputed area presently and in the future. Additionally, under Section 366.04(5), F.S., the Commission must determine what impact the requested modification would have on the coordinated electric power grid in Florida and to assure the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.

Indian River Shores argues that the statutory and rule criteria for approval of territorial agreements and resolution of territorial disputes are inapplicable to its Petition. Nonetheless, it alleges that modifying the Territorial Order would be in the public interest because the transfer would give customers access to FPL's energy conservation programs, deployment of solar generation, smart meters, FPL's storm hardening initiatives, highly regarded management expertise, and high customer satisfaction ratings. These reasons, even if true, are insufficient to demonstrate that modifying the Territorial Orders is necessary in the public interest or that modification would work no detriment to the public interest as a whole.

Indian River Shores asks that the Commission ensure that Indian River Shores residents currently served by Vero Beach will be transitioned to service by FPL in an orderly and efficient manner. However, neither FPL nor Vero Beach has asked the Commission to modify the Territorial Orders by approving a territorial agreement or resolving a dispute between them. FPL alleges in its Petition to Intervene that it is ready, willing, and able to serve all of Indian River Shores residents "assuming reasonable terms were reached for the acquisition of the City of Vero Beach's electric facilities in that area." (emphasis added) However, there is no indication in this docket of any agreement for transfer of lines or facilities from Vero Beach to FPL. The filings show that by letter of August 12, 2015, FPL made a $13 million offer to purchase Vero Beach's facilities in Indian River Shores that was rejected by Vero Beach. The Commission does not have jurisdiction to order Vero Beach to sell its facilities to FPL. There is no information before the Commission concerning how a transfer of facilities would occur, the costs or facilities involved, impact of such a transfer on all affected customers, or other information normally considered by the Commission in approving a territorial agreement or resolving a territorial dispute. Without this information, the Commission cannot ensure an orderly and efficient transition of service from Vero Beach to FPL or determine whether such a transfer would be necessary in the public interest.

Conclusion

For the reasons set forth above, staff recommends that the Commission should deny on the merits Indian River Shores' Petition for Modification of Territorial Order Based on Changed Legal Circumstances Emanating from Article VIII, Section 2(c) of the Florida Constitution because: (1) it fails to demonstrate that modification of the Territorial Orders is necessary in the public interest due to changed circumstances not present in the proceedings which led to the Territorial Orders; and (2) it fails to show that modification would not be detrimental to the public interest.

Issue 6: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendation, and if no person whose substantial interests are affected by the proposed agency action in Issue 5 files a protest within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a consummating order. (Cowdery)

Staff Analysis: Issue 5 should be issued as a proposed agency action. If the Commission approves staff's recommendation, and if no person whose substantial interests are affected by the proposed agency action files a protest of Issue 5 within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a consummating order.

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: August 31, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Office of Telecommunications (Beard)
Office of the General Counsel (Murphy)

RE: Docket No. 160129-TX – Request for cancellation of CLEC Certificate No. 7031, effective May 24, 2016, and request for relinquishment of eligible telecommunications carrier (ETC) designation in Florida, by Budget PrePay, Inc. d/b/a Budget Phone.

AGENDA: 09/13/16 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

By Order PSC-99-1116-PAA-TX, issued June 2, 1999, the Florida Public Service Commission (PSC or Commission) granted Competitive Local Exchange Company (CLEC) certificate No. 7031 to Budget PrePay, Inc. d/b/a Budget Phone (Budget).[1] By Order PSC-06-0067-CO-TX, issued January 25, 2006, the PSC designated Budget an Eligible Telecommunications Carrier (ETC) in the State of Florida.[2] On May 24, 2016, Budget filed a notice of cancellation of its CLEC certificate in the State of Florida and relinquishment of its designation as an ETC in the

[1] Docket No. 990476-TX, In Re: Application for certificate to provide alternative local exchange telecommunications service by Budget Phone, Inc.
[2] Docket No. 050483-TX, In Re: Petition for designation as eligible telecommunications carrier (ETC) by Budget Phone, Inc.

State of Florida. Budget has complied with Section 364.335(3), Florida Statutes, by providing notice in writing of its request for voluntary cancellation of its CLEC certificate and by submitting all Regulatory Assessment Fees that the company must pay. Pursuant to Section 2.07.C.5.g., Administrative Procedures Manual, the request to relinquish its CLEC certificate was acknowledged on August 26, 2016.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.10, Florida Statutes, and 47 C.F.R. §54.205.

Discussion of Issues

Issue 1: Should the Commission grant Budget's request for relinquishment of its ETC designation?

Recommendation: Yes, the Commission should grant Budget's request for relinquishment of its ETC designation. (Beard)

Staff Analysis: The Commission previously granted Budget CLEC certification and ETC designation in Florida. On May 24, 2016, Budget filed its request to relinquish its designation as an ETC in the State of Florida and for cancellation of its CLEC certificate.

Federal rules allow an ETC to relinquish its ETC designation. 47 C.F.R. §54.205 provides that:

> A state commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the state commission of such relinquishment.

Federal rules also require state commissions to ensure that existing customers are served. 47 C.F.R. §54.205(b) provides that:

> Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the state commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The state commission shall establish a time, not to exceed one year after the state commission approves such relinquishment under this section, within which such purchase or construction shall be completed.

The requirement in 47 C.F.R. §54.205(b) to protect existing customers is moot in this instance since Budget has indicated it has no existing Lifeline customers. Therefore, staff recommends that the Commission grant Budget's request for relinquishment of its ETC designation in Florida.

Issue 2: Should this docket be closed?

Recommendation: Yes. 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 the issuance of a consummating order. (Murphy)

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.

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: August 31, 2016

TO: Office of Commission Clerk (Stauffer)

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

RE: Docket No. 160150-TX – Petition for designation as eligible telecommunications carrier (ETC) by Phone Club Corporation.

AGENDA: 09/13/16 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Phone Club Corporation (Phone Club) is a Florida corporation organized on May 30, 2002, with its current headquarters in Palm Coast, Florida. The company was granted certification by the Florida Public Service Commission (FPSC or Commission) to operate as a Competitive Local Exchange Company (CLEC) in Florida in Docket No. 020536-TX, by Order No. PSC-02-1086-PAA-TX.

On May 17, 2016, Phone Club petitioned the FPSC for landline eligible telecommunications carrier (ETC) designation in the State of Florida. In its petition, Phone Club requested that it be granted ETC status in all of the non-rural BellSouth/AT&T (AT&T) service areas in the State of Florida for purposes of receiving federal universal service support. Phone Club also asserts that it is only seeking low-income support, and will not be requesting high-cost support from the federal Universal Service Fund (USF).

Phone Club provides local exchange service using resale obtained through a Resale Agreement with AT&T. Phone Club signed an applicant certification attesting that it will follow all Florida Statutes (F.S.), Florida Administrative Code (F.A.C.) Rules, FPSC Orders, Federal Communications Commission (FCC) Rules, FCC Orders, and regulations contained in the Telecommunications Act of 1996 (the Act) regarding Universal Service, ETCs, and Lifeline. (Attachment A)

In accordance with 47 C.F.R. § 54.201(d)(1), a company must offer the services that are supported by the federal universal support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services to obtain ETC designation and receive Lifeline reimbursement through the USF. However, non-ETC pure resellers were eligible to receive Lifeline reimbursement as a flow-through from its wholesale service provider.

In the 2015 Lifeline Second Further Notice of Proposed Rulemaking and Order, the FCC amended the Lifeline rules to eliminate Lifeline reimbursement for non-ETC resellers provisioning service through Resale Agreements.[1] Subsequently, effective August 15, 2016, non-ETC resellers, such as Phone Club, became ineligible to receive discounts for Lifeline service from its underlying resale carrier. Absent an approved Lifeline Compliance Plan by the FCC and state ETC designation, these non-ETC reseller companies would no longer provide Lifeline service with support. Staff informed Phone Club of this requirement, and communicated that Phone Club would need to submit an approved FCC Compliance Plan with the FPSC before staff could proceed with its analysis of Phone Club's ETC petition.

On July 26, 2016, Phone Club filed its proposed wireline Compliance Plan with the FCC to obtain forbearance from the facilities requirement of the Act, for the provision of Lifeline service.[2] The FCC approved Phone Club's proposed Lifeline Compliance Plan on August 10, 2016.[3]

As of August 18, 2016, Phone Club asserts that it serves 150 residential customers in Florida. The Commission has jurisdiction pursuant to Section 364.10(2), F.S., to rule on a petition by a CLEC seeking designation as an ETC pursuant to 47 C.F.R. § 54.201.

[1] In the Matter of Lifeline and Link-Up Reform and Modernization – WC Docket No. 11-42, Telecommunications Carriers Eligible for Universal Service Support – WC Docket No. 09-197, and Connect America Fund – WC Docket No. 10-90, Order FCC 15-71, Adopted: June 18, 2015, Released: June 22, 2015.
[2] Phone Club Compliance Plan - https://www.fcc.gov/ecfs/filing/10725243429438/document/1072524342943875c5.
[3] FCC Public Notice, WC Docket No. 09-197 and WC Docket No. 11-42, DA 16-905, Released August 10, 2016.

Discussion of Issues

Issue 1: Should Phone Club be granted landline ETC designation in the State of Florida?

Recommendation: Yes. Staff recommends that Phone Club be granted landline ETC designation status in all non-rural AT&T wire centers listed in Attachment B. If there is a future change of company ownership, the new owners should be required to file a petition with the FPSC and make a showing of public interest to maintain the company's ETC designation. (Williams)

Staff Analysis: Pursuant to Federal Statute, state commissions have the primary responsibility to designate providers as ETCs.[4] Designation as an ETC is required in order for a provider to be eligible to receive monies from the USF. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under Section 214(e) of this title shall be eligible to receive specific federal universal service support."[5] According to Section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal Universal Service mechanisms throughout its designated service areas. Further, 47 C.F.R. § 54.405(b) specifies that ETCs must publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.

ETC Certification Requirements

A state commission's responsibilities related to an ETC designation is provided in 47 C.F.R. § 54.201(c), where:

> Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

To qualify as an ETC for voice telephony services, a carrier must provide four services identified in 47 C.F.R. § 54.101(a)(1). The services are:

1) Voice grade access to the public switched network: Voice grade access is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call.

[4] 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201(b).
[5] 47 U.S.C. § 254(e).

2) Local Usage: Local usage indicates the amount of minutes of use of exchange service, provided free of additional charge to end users.

3) Access to emergency services: Access to emergency services includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations.

4) Toll limitation for qualifying low-income consumers: Toll limitation or blocking restricts all direct-dial toll access.

Also, 47 C.F.R. § 54.405(b) specifies that ETCs must publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.

Additional ETC Certification Requirements

In addition to requiring the above services, the FCC, on March 17, 2005, issued a Report and Order that established additional criteria that all ETC applicants must satisfy in order to be granted ETC status by the FCC.[6] In this Order, the FCC determined that an ETC applicant must also demonstrate:

1) Commitment and ability to provide the supported services throughout the designated area

2) Ability to remain functional in emergency situations

3) Ability to satisfy consumer protection and service quality standards

4) Provision of local usage comparable to that offered by the incumbent local exchange companies (ILEC)

The FCC approved these items in Phone Club's Compliance Plan.

Public Interest Determinations

Pursuant to Section 214 of the Act, the FCC and state commissions must determine that an ETC designation is consistent with the public interest, convenience and necessity for rural areas. They also must consider whether an ETC designation serves the public interest consistent with Section 254 of the Act. Congress did not establish specific criteria to be applied under the public interest tests in Sections 214 or 254. The public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas.[7] The FPSC has determined that before designating a carrier as an ETC, the FPSC should make an affirmative determination that such designation is in

[6] In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order FCC 05-46, Adopted: February 25, 2005, Released: March 17, 2005.
[7] In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order FCC 05-46 (¶40), Adopted: February 25, 2005, Released: March 17, 2005.

the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier.[8]

Beyond the principles detailed in the Act, the FCC and state commissions have used additional factors to analyze whether the designation of an ETC is in the public interest. A rigorous ETC designation process ensures that only fully qualified applicants receive designation as ETCs and that all ETC designees are prepared to serve all customers within the designated service area.

Staff recommends that if there is a future change of company ownership, the new owners should be required to file a petition with the FPSC and make a showing of public interest to maintain the company's ETC designation. This will ensure that only carriers that are financially viable, likely to remain in the market, willing and able to provide the supported services throughout the designated service area, and able to provide consumers an evolving level of universal service are designated as ETCs.

Additional ETC Requirements

Transitional Lifeline

In accordance with Section 364.105, F.S., Transitional Lifeline requires that ETCs offer discounted residential basic local telecommunications service at 70 percent of the residential local telecommunications service rate for any Lifeline subscriber who no longer qualifies for Lifeline. A Lifeline subscriber who requests such service receives the discounted price for a period of one year after the date the subscriber ceases to be qualified for Lifeline.

Lifeline Advertising

Phone Club asserts that it will advertise the availability of Lifeline in newspapers, TV, and direct mail as required by 47 U.S.C. § 214(e)(1)(B). Phone Club also asserts that it will provide information about Lifeline availability through community partnerships and work with social service groups that interface with Lifeline-eligible customers. In response to staff's data request, Phone Club asserted that it currently advertises its Lifeline service in small community and church newspapers, and through direct mail. Phone Club also provided an example of a Lifeline advertisement which included eligibility requirements.

Facilities Requirement

In accordance with 47 C.F.R. § 54.201(d)(1), a company must offer the services that are supported by the federal universal support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services. Phone Club plans to offer all of the supported services enumerated under Section 254(c) of the Act through its resale agreement with AT&T. On August 10, 2016, the FCC approved Phone Club's wireline Compliance Plan as a condition of obtaining forbearance from the facilities requirement for the provision of Lifeline service.

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[8] See Docket No. 090245-TP, In re: Petition for limited designation as eligible telecommunications carrier (ETC) by Virgin Mobile USA, L.P., Order No. PSC-10-0323-PAA-TP, issued May 19, 2010, p. 8; See Docket No. 090337TX, In re: Petition for designation as eligible telecommunications carrier (ETC) by Easy Telephone, Inc., Order No. PSC-10-0125-PAA-TX, issued March 2, 2010, p. 4; See Docket No. 080169-TX, In re: Application for designation as eligible telecommunications carrier (ETC) by Express Phone Service, Inc., Order No. PSC-08-0836-PAA-TX, issued December 24, 2008, p. 4.

Phone Club's Petition

Phone Club is requesting that it be granted landline ETC status throughout the non-rural wire centers of AT&T (Attachment B) for the purpose of receiving federal universal service support. Phone Club maintains that it is only seeking low-income support, and it is not requesting high-cost support from the USF. Phone Club's purpose in requesting ETC status in Florida is to provide Lifeline services over landline access lines. Phone Club has acknowledged the requirements of the Florida Lifeline program, and has agreed to adhere to the program which provides qualified customers a $9.25 credit.

Staff reviewed Phone Club's payment history of regulatory assessment fees, consumer complaint incidents and the timely resolution of those complaints, financial statements, and Phone Club's status with the Florida Department of State Division of Corporations, among other sources. Phone Club appears to be in good standing with the Commission.

Conclusion

Based on staff's review, staff believes that Phone Club's petition for landline ETC designation is in the public interest and should be approved. If Phone Club should decide in the future to seek High Cost universal service funds, ETC status in rural areas, or ETC designation as a wireless or broadband ETC, Phone Club should be required to file a petition with the appropriate agency and make a showing that it would be in the public interest to grant such a request.

Therefore, staff recommends that Phone Club be granted landline ETC designation status in all non-rural AT&T wire centers listed in Attachment B. If there is a future change of company ownership, the new owners should be required to file a petition with the FPSC and make a showing of public interest to maintain the company's ETC designation.

Issue 2: Should this docket be closed?

Recommendation: Yes. 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 and the docket closed upon issuance of a Consummating Order. (Lherisson)

Staff Analysis: If no person whose substantial interests are affected files a protest to the Commission's Proposed Agency Action within 21 days of the issuance of the Commission Order, this docket should be closed upon issuance of a Consummating Order.

APPLICANT CERTIFICATION

State of FLORIDA
County of FLAGLER

My name is PRISCILA WOLFF, I am employed by PHONE CLUB CORPORATION, located at 4262 OLD A1A PALM COAST - FL as its PRESIDENT. I am an officer of the Company and am authorized to provide the following certifications on behalf of the Company. This certification is being given to support the wireline Eligible Telecommunications Carrier petition filed by my Company with the Florida Public Service Commission (PSC).

Company hereby certifies the following:

1. Company will follow all Florida Statutes, Florida Administrative Rules, and Florida PSC Orders relating to Universal Service, Eligible Telecommunications Carriers (ETC), and the Florida Lifeline Program.

2. Company will follow all FCC rules, FCC Orders, and regulations contained in the Telecommunications Act of 1996 regarding federal Universal Service Program.

3. Company agrees that the Florida PSC may revoke a carrier's ETC designation for good cause after notice and opportunity for hearing, for violations of any applicable Florida Statutes, Florida Administrative Rules, Florida PSC Orders, failure to fulfill requirements of Sections 214 or 254 of the Telecommunications Act of 1996, or if the PSC determines that it is no longer in the public interest for the company to retain ETC designation.

4. Company understands that if its petition for ETC designation is found to be in the public interest and approved by the PSC, it is based upon the information provided to the PSC in its petition. If there is a future change of company ownership, the company understands that the new owners must file a petition with the PSC prior to offering or getting USF or Lifeline, prior to the change of ownership and also make a showing of public interest to maintain the ETC designation.

5. Company understands that it may only receive reimbursement from the Universal Service Administrative Company (USAC) for active customer access lines which are provided using its own facilities or a combination of its own facilities and access lines obtained as UNEs from another carrier.

6. Company understands that the PSC shall have access to all books of account, records and property of all eligible telecommunications carriers. Company agrees to maintain records to document compliance with all federal and state requirements governing the Lifeline program for as long as the consumer receives Lifeline service plus five years.

7. Company understands that Lifeline certification forms must be signed by applicants confirming that they participate in a qualifying Lifeline-eligible program prior to that customer being enrolled in the Florida Lifeline program. If a Lifeline applicant uses income-based eligibility, the company will require documents showing proof of income before customer eligibility is granted.

8. Company agrees that it will not file a request for any low-income reimbursement at USAC without having customer-signed Lifeline certification applications on file at its office supporting amounts requested on USAC's Form 497.

9. Company agrees it will submit to the PSC a copy of Form 497s filed with USAC, and will make available supporting signed customer Lifeline certifications upon request to:

   Florida Public Service Commission
   Office of Telecommunications
   2540 Shumard Oak Drive
   Tallahassee, Florida 32399-0850

10. Company agrees that it will file a copy of its annual reporting requirements for High-Cost support recipients pursuant to 47 C.F.R. 54.313 with the PSC.

I am aware that pursuant to Section 837.06, F.S., whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree.

Priscila Wolff — Signature

08/18/16 — Date

PRISCILA WOLFF — Printed Name

Business Address:
4262 OLD A1A
PALM COAST - FL
32137

AT&T Areas

FMTNALMTRS0	FLBHFLMARS0	JCVLFLCL05T	MIAMFLNSDS0	PAHKFLMARS0	WPBHFLANDS0
ARCHFLMARS0	FRBHFLFPDS0	JCVLFLCLDS0	MIAMFLOLDS0	PCBHFLNTDS0	WPBHFLGADS0
BCRTFLBTDS0	FTGRFLMARS0	JCVLFLFCDS0	MIAMFLPBDS0	PLCSFLMADS0	WPBHFLGR02T
BCRTFLMADS1	FTLDFLCRDS0	JCVLFLJARS0	MIAMFLPLDS0	PLTKFLMADS0	WPBHFLGRDS0
BCRTFLSADS0	FTLDFLCYDS0	JCVLFLJTRSA	MIAMFLPLRS0	PMBHFLCSDS0	WPBHFLHHDS0
BGPIFLMARS0	FTLDFLJADS0	JCVLFLLFDS0	MIAMFLRRDS0	PMBHFLFEDS0	WPBHFLHHRS0
BKVLFLJFDS0	FTLDFLMRDS0	JCVLFLNODS0	MIAMFLSHDS0	PMBHFLMADS0	WPBHFLLEDS0
BLDWFLMARS0	FTLDFLOADS0	JCVLFLOWDS0	MIAMFLSODS0	PMBHFLNPRS0	WPBHFLRB84E
BLGLFLMADS0	FTLDFLPLDS0	JCVLFLRV38E	MIAMFLWDDS0	PMBHFLTADS0	WPBHFLRPDS0
BNNLFLMARS0	FTLDFLSGDS0	JCVLFLSJ73E	MIAMFLWMDS0	PMPKFLMARS0	WWSPFLHIDS0
BRSNFLMARS0	FTLDFLSU74E	JCVLFLSMDS0	MICCFLBBRS0	PNCYFLCARS0	WWSPFLSHDS0
BYBHFLMADS0	FTLDFLWNDS0	JCVLFLWCDS0	MLBRFLMADS0	PNCYFLMA04T	YNFNFLMARS0
CCBHFLAFRS0	FTPRFLMADS0	JPTRFLMADS0	MLTNFLRADS0	PNCYFLMADS0	YNTWFLMARS0
CCBHFLMADS0	GCSPFLCNDS0	KYHGFLMARS0	MNDRFLAVDS0	PNSCFLBLDS0	YULEFLMARS0
CDKYFLMARS0	GCVLFLMARS0	KYLRFLLSRS0	MNDRFLLODS0	PNSCFLFPDS0	
CFLDFLMARS0	GENVFLMARS0	KYLRFLMARS0	MNDRFLLWRS0	PNSCFLHCRS0	
CHPLFLJADS0	GLBRFLMCDS0	KYWSFLMADS0	MNSNFLMARS0	PNSCFLPBDS0	
CNTMFLLEDS1	GSVLFLMA01T	LKCYFLMADS0	MRTHFLVERS0	PNSCFLWA01T	
COCOFLMADS0	GSVLFLMADS0	LKMRFLHEDS0	MXVLFLMARS0	PNSCFLWADS0	
COCOFLMEDS0	GSVLFLMADS1	LYHNFLOHDS0	NDADFLACDS0	PNVDFLMADS0	
COCYFL13AMD	GSVLFLNW33E	MCNPFLMARS0	NDADFLBRDS0	PRRNFLMADS0	
CSCYFLBARS0	HAVNFLMADS0	MDBGFLPMDS0	NDADFLGG03T	PRSNFLFDRS0	
DBRYFLDLOS0	HBSDFLMADS0	MIAMFLAEDS0	NDADFLGGDS0	PTSLFLMADS0	
DBRYFLMARS1	HLNVFLMADS1	MIAMFLAERS0	NDADFLOLDS0	PTSLFLSOCG0	
DELDFLMADS0	HLWDFLHA45E	MIAMFLALDS0	NKLRFLMARS0	SBSTFLFERS0	
DLBHFLKPDS0	HLWDFLMADS0	MIAMFLAPDS0	NSBHFLMADS0	SBSTFLMADS0	
DLBHFLMA27E	HLWDFLPEDS0	MIAMFLBA85E	NWBYFLMARS0	SGKYFLMARS0	
DLBHFLMARS0	HLWDFLWHDS0	MIAMFLBCDS0	OKHLFLMARS0	SNFRFLMADS0	
DLSPFLMARS0	HMSTFLEARS0	MIAMFLBRDS0	OLTWFLLNRS0	STAGFLBSRS0	
DNLNFLWMRS0	HMSTFLHMDS0	MIAMFLCADS0	ORLDFLAPDS0	STAGFLMADS0	
DRBHFLMADS0	HMSTFLNARS0	MIAMFLDBRS1	ORLDFLCLDS0	STAGFLSHRS0	
DYBHFLFNRS0	HTISFLMADS0	MIAMFLFLDS0	ORLDFLMA04T	STAGFLWGRS0	
DYBHFLMADS0	HWTHFLMARS0	MIAMFLGRDS0	ORLDFLMADS1	STRTFLMADS0	
DYBHFLOBDS0	ISLMFLMARS0	MIAMFLGRDS1	ORLDFLPCDS0	SYHSFLCCRS0	
DYBHFLOSRS0	JAY FLMARS0	MIAMFLHLDS0	ORLDFLPHDS0	TRENFLMARS0	
DYBHFLPO01T	JCBHFLABRS0	MIAMFLICDS0	ORLDFLSADS0	TTVLFLMADS0	
DYBHFLPODS0	JCBHFLMA24E	MIAMFLKEDS0	ORPKFLMADS0	VERNFLMARS0	
EGLLFLBGDS0	JCBHFLSPRS0	MIAMFLME32E	ORPKFLRWDS0	VRBHFLBERS0	
EGLLFLIHDS0	JCVLFLARDS0	MIAMFLMERS0	OVIDFLCADS0	VRBHFLMADS0	
EORNFLMARS0	JCVLFLBWDS0	MIAMFLNMDS0	PACEFLPVRS0	WELKFLMARS0	

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: August 31, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Office of Telecommunications (Deas, Fogleman)
Office of the General Counsel (Corbari)

RE: Docket No. 160162-TX – Bankruptcy cancellation by Florida Public Service Commission of CLEC Certificate No. 7269, issued to Primus Telecommunications, Inc., effective July 19, 2016.

AGENDA: 09/13/16 – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Primus Telecommunications, Inc. (Primus) currently holds local exchange telecommunications company Certificate No. 7269, issued on December 29, 1999. Pursuant to Section 364.336, Florida Statutes (F.S.), telecommunications companies must pay a minimum annual Regulatory Assessment Fee (RAF) if the certificate or registration was active during any portion of the calendar year and late payment charges as outlined in Section 350.113, F.S., for any delinquent amounts.

On February 2, 2016, Birch Telecom of the South, Inc. d/b/a Birch Telecom d/b/a Birch Communications (Birch) notified the Commission that Primus would be transferring its Florida

customers to Birch.[1] Birch is a Delaware corporation, and is a wholly owned subsidiary of Birch Communications, Inc. (BCI). Primus is a Delaware corporation held by PTUS, Inc., which is a Delaware corporation and wholly owned subsidiary of Holdco, Inc., a private company incorporated under the Ontario *Business Corporations Act,* with registered head offices in Toronto, Canada.[2] Both Birch and BCI are authorized by the Commission to provide local exchange services in Florida.[3]

On January 18, 2016, BCI and Primus entered into an Asset Purchase Agreement (Agreement) pursuant to which BCI would purchase certain assets and customers of Primus, including certain customer accounts and receivables, certain customer agreements and contracts, certain vendor agreements and contracts, certain equipment, and certain intellectual property.[4] BCI, however, would not assume any of Primus' pre-closing liabilities or obligations.[5]

On January 19, 2016, Primus filed an application[6] for court protection in Ontario, Canada, pursuant to the provisions of Canada's *Companies' Creditors Arrangement Act*, (the CCAA), R.S.C. 1985, c. C-36, the statute under which debtors may be granted relief from creditors. In addition, Primus requested authorization to apply for recognition in the United States pursuant to Chapter 15 of the United States Bankruptcy Code.[7]

On January 19, 2016, an Initial Order was entered by the Ontario Superior Court of Justice, finding Primus insolvent and granting Primus CCAA protection while it is liquidated and winds downs operations.

On January 21, 2016, Primus filed a Chapter 15 Petition for Recognition of a Foreign Proceeding in the United States Bankruptcy Court for the District of Delaware,[8] which resulted in the *pro forma* assignment of Primus' Florida telecommunications authorization from Primus Telecommunications, Inc. to Primus Telecommunications, Inc., debtor-in-possession. In addition, the United States Bankruptcy Court issued an Order granting Primus a stay of any and all actions or proceedings against it or its assets in the United States pursuant to Sections 362 and

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1 Document No. 04272-16, filed in Docket No. 160162-TX, *In Re: Bankruptcy cancellation by Florida Public Service Commission of CLEC Certificate No. 7269, issued to Primus Telecommunications, Inc., effective June 28, 2016*, pgs. 65-73.

2 Document No. 01605-16, pgs. 36-43; and Document No. 04272-16, pgs. 25-26.

3 Birch: CLEC Certificate No. 7552;
BCI: CLEC Certificate No. 7130.

4 Document No. 04272-16, pgs. 65-73.

5 *Id.*

6 *In the Matter of the Companies Creditors Arrangement Act, R.S.C. 1985, c. C-36, As Amended, AND In the Matter of a Plan of Compromise or Arrangement of PT Holdco, Inc., Primus Telecommunications Canada Inc., PTUS, Inc. Primus Telecommunications, Inc., and Lingo, Inc.*, Ontario Superior Court of Justice, Commercial List, Court File No. CV-16-11257-00CL.

7 11 U.S.C. § 1501-1532.

8 Document No. 06949-16, pgs. 3-27, Chapter 15 Petition for Recognition of a Foreign Proceeding, *In Re: Primus Telecommunications, Inc.*, United States Bankruptcy Court, District of Delaware, Case No. 16-10133 (LSS), administered jointly with, *In Re: PT Holdco, Inc. et al*, United States Bankruptcy Court, District of Delaware, Case No. 16-10131 (LSS).

365 of the Bankruptcy Code, pending the formal recognition of the foreign proceeding by the United States Bankruptcy Court.[9]

On February 25, 2016, the Ontario Superior Court of Justice issued an Approval and Vesting Order, approving the sale transactions outlined in the Agreement between Primus and Birch, and approving transfer and vesting of Primus regulated customer relationships to BCI free and clear of all encumbrances.[10] In addition, the court respectfully requested that its Order be recognized and given effect by any court, tribunal, regulatory or administrative body having jurisdiction in the United States or Canada.

On March 2, 2016, the Ontario Superior Court of Justice issued an Assignment Order, assigning the rights and obligations of Primus under the assigned contracts outlined in the Agreement between Primus and Birch, to BCI free and clear of all encumbrances.[11]

On March 4, 2016, the United States Bankruptcy Court for the District of Delaware issued an Order recognizing and enforcing the Assignment, Approval and Vesting and Distribution Orders of the Canadian Court and granting related relief.[12]

On March 18, 2016, Commission staff received an email from Primus stating that the Canadian Bankruptcy includes all prior debts, such as RAF fees and penalties owed by Primus for 2015.[13]

On May 3, 2016, certain Primus operating assets and customers were sold to BCI, in accordance with the Agreement and Order Pursuant to Sections 363, 365, 1501, 1517, 1519, 1520, 1521 and 105(a) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 9014, For Entry of an Order Recognizing and Enforcing the Assignment, Approval and Vesting and Distribution Orders and Granting Related Relief, issued by United States Bankruptcy Court Judge Laurie Selber Silversteen.

On June 28, 2016, Birch notified this Commission that the transfer of Primus Florida customers to Birch was consummated effective on May 3, 2016, and requested cancellation of Primus CLEC certificate.[14] On July 19, 2016, the Commission received a letter from counsel for Primus, confirming Primus transferred its Florida customer base to Birch, effective May 3, 2016, and requesting a cancellation of its certificate of authority to offer telecommunications services in Florida and its tariffs on file with the Commission.[15]

This recommendation addresses Primus' request for bankruptcy cancellation of its local exchange certificate. The Commission has jurisdiction over this matter pursuant to Chapter 364, F.S., and Section 350.113, F.S.

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[9] Document No. 06949-16, pgs. 33-37.
[10] Document No. 01605-16, pgs. 14-23.
[11] Document No. 01605-16, pgs. 3-13.
[12] Document No. 06949-16, pgs. 45-105.
[13] Document No. 04272-16, pgs. 4-64; and Document No. 01605-16.
[14] Document No. 04272-16, pgs. 2-3.
[15] Document No. 05341-16.

Discussion of Issues

Issue 1: Should the Commission cancel Primus Telecommunications, Inc.'s local exchange telecommunications company Certificate No. 7269, effective July 19, 2016, due to bankruptcy for the reasons set out in Attachment A?

Recommendation: Yes, the Commission should cancel Primus Telecommunications Inc.'s local exchange telecommunications company Certificate No. 7269, effective July 19, 2016, due to bankruptcy, for the reasons set out in Attachment A. In addition, the Commission should direct the Division of Administrative and Information Technology Services to request permission from the Florida Department of Financial Services to write off any outstanding Regulatory Assessment Fees owed by Primus Telecommunication Inc., including any statutory interest and penalties, rather than referring the company to collection services due to bankruptcy. Finally, the Commission should order Primus Telecommunications Inc. to immediately cease and desist providing competitive local exchange services in Florida. (Deas, Corbari)

Staff Analysis: See Attachment A, proposed Order

Issue 2: Should this docket be closed?

Recommendation: Yes, 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 and the docket closed upon issuance of a Consummating Order. (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 should be issued and the docket closed upon issuance of a Consummating Order.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Bankruptcy cancellation by Florida Public Service Commission of CLEC Certificate No. 7269, issued to Primus Telecommunications, Inc., effective July 19, 2016.	DOCKET NO. 160162-TX ORDER NO. ISSUED:

The following Commissioners participated in the disposition of this matter:

JULIE I. BROWN, Chairman
LISA POLAK EDGAR
ART GRAHAM
RONALD A. BRISÉ
JIMMY PATRONIS

NOTICE OF PROPOSED AGENCY ACTION ORDER GRANTING CANCELLATION OF LOCAL EXCHANGE CERTIFICATE DUE TO BANKRUPTCY

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

CASE BACKGROUND

Primus Telecommunications, Inc. (Primus) currently holds local exchange telecommunications company Certificate No. 7269, issued on December 29, 1999. Pursuant to Section 364.336, Florida Statutes (F.S.), telecommunications companies must pay a minimum annual Regulatory Assessment Fee (RAF) if the certificate was active during any portion of the calendar year and late payment charges as outlined in Section 350.113, F.S., for any delinquent amounts.

On February 2, 2016, Birch Telecom of the South, Inc. d/b/a Birch Telecom d/b/a Birch Communications (Birch) notified this Commission that Primus would be transferring its Florida customers to Birch.[16] Birch is a Delaware corporation, and is a wholly owned subsidiary of Birch

[16] Document No. 04272-16, filed in Docket No. 160162-TX, *In Re: Bankruptcy cancellation by Florida Public Service Commission of CLEC Certificate No. 7269, issued to Primus Telecommunications, Inc., effective June 28, 2016*, pgs. 65-73.

Communications, Inc. (BCI). Primus is a Delaware corporation held by PTUS, Inc., which is a Delaware corporation and wholly owned subsidiary of Holdco, Inc., a private company incorporated under the Ontario *Business Corporations Act,* with registered head offices in Toronto, Canada.[17] Both Birch and BCI are authorized by this Commission to provide local exchange services in Florida.[18]

On January 18, 2016, BCI and Primus entered into an Asset Purchase Agreement (Agreement) pursuant to which BCI would purchase certain assets and customers of Primus, including certain customer accounts and receivables, certain customer agreements and contracts, certain vendor agreements and contracts, certain equipment, and certain intellectual property.[19] BCI, however, would not assume any of Primus' pre-closing liabilities or obligations.[20]

On January 19, 2016, Primus filed an application[21] for court protection in Ontario, Canada, pursuant to the provisions of Canada's *Companies' Creditors Arrangement Act*, (the CCAA), R.S.C. 1985, c. C-36, the statute under which debtors may be granted relief from creditors. In addition, Primus requested authorization to apply for recognition in the United States pursuant to Chapter 15 of the United States Bankruptcy Code.[22]

On January 19, 2016, an Initial Order was entered by the Ontario Superior Court of Justice, finding Primus' financial situation rendered it insolvent, and granting Primus CCAA protection while it is liquidated and winds downs operations.

On January 21, 2016, Primus filed a Chapter 15 Petition for Recognition of a Foreign Proceeding in the United States Bankruptcy Court for the District of Delaware,[23] which resulted in the *pro forma* assignment of Primus' Florida telecommunications authorization from Primus Telecommunications, Inc. to Primus Telecommunications, Inc., debtor-in-possession. In addition, the United States Bankruptcy Court issued an Order granting Primus a stay of any and all actions or proceedings against it or its assets in the United States pursuant to Sections 362 and 365 of the Bankruptcy Code, pending the formal recognition of the foreign proceeding by the United States Bankruptcy Court.[24]

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[17] Document No. 01605-16, pgs. 36-43; and Document No. 04272-16, pgs. 25-26.

[18] Birch: CLEC Certificate No. 7552;
BCI: CLEC Certificate No. 7130.

[19] Document No. 04272-16, pgs. 65-73.

[20] *Id.*

[21] *In the Matter of the Companies Creditors Arrangement Act, R.S.C. 1985, c. C-36, As Amended, AND In the Matter of a Plan of Compromise or Arrangement of PT Holdco, Inc., Primus Telecommunications Canada Inc., PTUS, Inc. Primus Telecommunications, Inc., and Lingo, Inc.*, Ontario Superior Court of Justice, Commercial List, Court File No. CV-16-11257-00CL.

[22] 11 U.S.C. § 1501-1532.

[23] Document No. 06949-16, pgs. 3-27, Chapter 15 Petition for Recognition of a Foreign Proceeding, *In Re: Primus Telecommunications, Inc.*, United States Bankruptcy Court, District of Delaware, Case No. 16-10133 (LSS), administered jointly with, *In Re: PT Holdco, Inc. et al*, United States Bankruptcy Court, District of Delaware, Case No. 16-10131 (LSS).

[24] Document No. 06949-16, pgs. 33-37.

On February 25, 2016, the Ontario Superior Court of Justice issued an Approval and Vesting Order, approving the sale transactions outlined in the Agreement between Primus and Birch, and approving transfer and vesting of Primus regulated customer relationships to BCI free and clear of all encumbrances.[25] In addition, the court respectfully requested that its Order be recognized and given effect by any court, tribunal, regulatory or administrative body having jurisdiction in the United States or Canada.

On March 2, 2016, the Ontario Superior Court of Justice issued an Assignment Order, assigning the rights and obligations of Primus under the assigned contracts outlined in the Agreement between Primus and Birch, to BCI free and clear of all encumbrances.[26]

On March 4, 2016, the United States Bankruptcy Court issued an Order recognizing and enforcing the Assignment, Approval and Vesting and Distribution Orders of the Canadian Court and granting related relief.[27]

On March 18, 2016, our staff received an email from Primus stating that the Canadian Bankruptcy included all prior debts, such as RAF fees and penalties owed by Primus.[28]

On May 3, 2016, certain Primus operating assets and customers were sold to BCI, in accordance with the Agreement and Order Pursuant to Sections 363, 365, 1501, 1517, 1519, 1520, 1521 and 105(a) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 9014, For Entry of an Order Recognizing and Enforcing the Assignment, Approval and Vesting and Distribution Orders and Granting Related Relief, issued by United States Bankruptcy Court Judge Laurie Selber Silversteen.

On June 28, 2016, Birch notified us that the transfer of Primus Florida customers to Birch was consummated effective on May 3, 2016, and requested cancellation of Primus CLEC certificate.[29] On July 19, 2016, we received a letter from counsel for Primus, confirming Primus transferred its Florida customer base to Birch, effective May 3, 2016, and requesting a cancellation of its certificate of authority to offer telecommunications services in Florida and its tariffs on file with this Commission.[30]

We are vested with jurisdiction over this matter pursuant to Chapter 364, F.S., and Section 350.113, F.S.

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[25] Document No. 01605-16, pgs. 14-23.
[26] Document No. 01605-16, pgs. 3-13.
[27] Document No. 06949-16, pgs. 45-105.
[28] Document No. 04272-16, pgs. 4-64; and Document No. 01605-16.
[29] Document No. 04272-16, pgs. 2-3.
[30] Document No. 05341-16.

DECISION

Pursuant to Section 364.336, F.S., telecommunications companies must pay a minimum annual RAF if their certificate was active during any portion of the calendar year and late payment charges as outlined in Section 350.113, F.S., for any delinquent amounts.

Primus filed a Chapter 15 Petition for Recognition of a Foreign Proceeding[31] in the United States Bankruptcy Court in the District of Delaware pursuant to 11 U.S.C. § 1504 of the US Bankruptcy Code. The purpose of Chapter 15 is to provide effective mechanisms for dealing with insolvency cases involving debtors, assets, claimants, and other parties of interest involving more than one country.[32] A Chapter 15 bankruptcy proceeding is ancillary to a primary proceeding brought in another country, usually the debtor's home country. Immediately upon the recognition of a foreign main proceeding, the automatic stay and selected other provisions of the Bankruptcy Code, such as 11 U.S.C. § 362, take effect within the United States.[33]

Pursuant to 11 U.S.C. § 362 (a)(1), (2) and (6), the filing of a petition for bankruptcy relief acts as an automatic stay that bars an action or proceeding against the debtor that was or could have been commenced before the bankruptcy case. Thus, a governmental entity such as this Commission is enjoined from exercising our regulatory authority to collect, assess or recover pre-petition debt, such as RAFs.

In addition, in any bankruptcy liquidation or reorganization, secured creditors are given the highest priority in the distribution and, normally, receive all of the distributed assets. RAFs, late payment charges, and penalties owed by a company to this Commission, as well as monetary settlements of cases resolving issues of failure to pay such fees, are not secured debts and, as a practical matter, are uncollectible in a bankruptcy proceeding where liquidation occurs.

Therefore, we would be prevented from collecting the RAFs owed by this company, and from assessing and collecting a penalty for failure to pay the fees. Primus currently owes RAFs plus statutory interest and penalties for 2015. In addition, Primus will owe RAFs for 2016.

Accordingly, we hereby find that Primus Telecommunications, Inc.'s Certificate No. 7269, shall be cancelled due to bankruptcy, effective July 19, 2016. In addition, any unpaid RAFs, including any statutory interest and penalties, shall be sent to the Florida Department of Financial Services to request permission for this Commission to write off the uncollectible amount.

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[31] A "foreign proceeding" is a "judicial or administrative proceeding in a foreign country ... under a law relating to insolvency or adjustment of debt in which proceeding the [debtor's assets and affairs] are subject to control or supervision by a foreign court for the purpose of reorganization or liquidation." 11 U.S.C. § 101(23).

[32] 11 U.S.C. § 1501

[33] 11 U.S.C. § 1520

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Primus Telecommunications, Inc.'s Certificate No. 7269, to provide local exchange telecommunications service is hereby cancelled, effective July 19, 2016, due to bankruptcy. It is further

ORDERED that any outstanding Regulatory Assessment Fees, including any accrued statutory interest and penalties owed by Primus Telecommunications, Inc., shall be sent to the Department of Financial Services. The Division of Administrative and Information Technology Services shall request permission to write off the uncollectible amount. It is further

ORDERED that Primus Telecommunications, Inc. shall immediately cease and desist providing telecommunication services in Florida. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, F.A.C., is received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this _____ day of _____, _____.

_____
CARLOTTA S. STAUFFER
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

KFC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

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

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on _____.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

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: August 31, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (Mouring)
Division of Engineering (Lee)
Office of the General Counsel (Janjic)

RE: Docket No. 160134-EI – Petition for accounting recognition of Gulf Power Company's ownership in Plant Scherer as being in service to retail customers.

AGENDA: 09/13/16 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On May 5, 2016, Gulf Power Company (Gulf or Company) filed a letter notifying the Commission of the change in status of Gulf's ownership interest in the Plant Scherer Unit No. 3 (Scherer Unit 3) and the associated common facilities. In addition to notifying the Commission that Plant Scherer is now dedicated to serving native load customers, Gulf specifically requested that it may: 1) stop making adjustments to its monthly Earning Surveillance Reports (ESRs) to remove Scherer Unit 3's related investment and expenses from the retail jurisdictional rate of return calculation to the extent that it is not currently committed to off-system sales; and 2) reflect the Scherer Unit 3 as a native load serving resource in all other regulatory filings with the Commission. The Company has been making adjustments to remove Scherer Unit 3 from retail jurisdictional filings since 1990 pursuant to Order No. 23573.[1] The Office of Public Counsel

[1] Order No. 23573, issued October 3, 1990, in Docket No. 891345-EI, *In re: Application of Gulf Power Company for a rate increase, pp. 12-13.*

filed a Notice of Intervention in this docket on July 21, 2016. Also, by letter dated July 27, 2016, the Sierra Club urged the Commission to deny the Company's request or to defer its decision on this item, citing what the Sierra Club believes are substantive omissions in the Company's request.

This recommendation addresses the requested change in status for Scherer Unit 3. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: How should the Commission recognize Gulf's request to acknowledge the change in status of Scherer Unit 3?

Recommendation: The Commission should order Gulf to file two separate monthly Earning Surveillance Reports (ESRs). Pursuant to Rule 25-6.1352, Florida Administrative Code, (F.A.C.), and in accordance with Order No. 23573, the Company should continue to make adjustments to its monthly ESRs to remove Scherer Unit 3's related investment and expenses from the retail jurisdictional rate base. In addition, Gulf should recognize its share of Scherer Unit 3's related investment and expenses that are not currently committed to off-system sales in a separate concurrently filed monthly ESR. Gulf retains the opportunity to seek approval to include its share of Scherer Unit 3 in retail jurisdictional rate base in a future regulatory proceeding. (Mouring, Lee)

Staff Analysis: As stated in the case background, Gulf requested that it may: 1) stop making adjustments to its monthly ESRs to remove Scherer Unit 3's related investment and expenses from the retail jurisdictional rate of return calculation to the extent that it is not currently committed to off-system sales; and 2) reflect Scherer Unit 3 as a native load serving resource in all other regulatory filings with the Commission.

In its request, the Company stated that the first of three existing long-term off-system sales contracts expired at the end of 2015, releasing approximately 52 percent of Gulf's ownership in Scherer Unit 3, and an additional contract expiring in May 2016, releasing an additional 24 percent of Gulf's ownership in Scherer Unit 3 to be used in serving its native load customers. The final long-term contract is set to expire in December 2019, which will then enable Gulf to dedicate 100 percent of the capacity of its ownership in Scherer Unit 3 to serving its native load customers.

Gulf also stated that its ownership interest in Scherer Unit 3 has always been to ultimately serve its native load customers, and the long-term off-system sales contracts served to bridge the gap in time between the commercial operation date of Scherer Unit 3 and the anticipated need of the generation to serve native load customers. In its request, the Company cites two Commission Orders[2] in support of its assertion that its ownership interest in Scherer Unit 3 was deemed prudent by the Commission in lieu of constructing new generating assets at its Caryville site, and that it was always intended to serve native load customers.

Staff agrees that the Commission has acknowledged in previous Orders that Gulf's decision to not construct a new generating asset at the Caryville site, and in lieu purchase an ownership interest in Scherer Unit 3, was found to be reasonable based upon an economic advantage to Gulf's customers.[3] Therefore, staff believes that Gulf retains the opportunity to seek approval to

[2] Order Nos. 10557, issued February 1, 1982, in Docket No. 810136-EU, *In re: Petition of Gulf Power Company for an increase in its rates and charges, p. 13,* and 11498, issued January 11, 1983, in Docket No. 820150-EU, *In re: Petition of Gulf Power Company for an increase in its rates and charges, p. 15.*
[3] Order No. 9628, issued November 10, 1980, in Docket No. 800001-EU, *In re: Petition of Gulf Power Company for an increase in its rates and charges, pp. 6-7.*

include its share of Scherer Unit 3 in retail jurisdictional rate base in a future regulatory proceeding.

Pursuant to Rule 25-6.1352, F.A.C., and in accordance with Order No. 23573, the Company should continue to make adjustments to its monthly ESRs to remove Scherer Unit 3's related investment and expenses from the retail jurisdictional rate base. Additional information is needed to monitor the impact of Gulf's share of Scherer Unit 3 on the Company's jurisdictional earnings. Thus, staff recommends the Commission order Gulf to file a separate monthly ESR with recognition of its share of Scherer Unit 3's related investment and expenses that are not currently committed to off-system sales.

Issue 2: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendation, this docket should be closed. (Janjic)

Staff Analysis: If the Commission approves staff's recommendation, this docket should be closed.

Item 7

FILED AUG 31, 2016
DOCUMENT NO. 07170-16
FPSC - COMMISSION CLERK

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: August 31, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (Slemkewicz, D. Buys, Mouring)
Division of Economics (Hudson, Johnson)
Division of Engineering (King, Mtenga)
Office of the General Counsel (Mapp)

RE: Docket No. 150269-WS – Application for limited proceeding water rate increase in Marion, Pasco, and Seminole Counties, by Utilities, Inc. of Florida.

AGENDA: 09/13/16 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brisé

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Utilities, Inc. of Florida (UIF or Utility) is a Class A utility providing water and wastewater service to twenty-seven systems in the following counties: Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole. On December 30, 2015, the Utility requested a limited proceeding water rate increase for Marion, Pasco, and Seminole Counties. UIF is a wholly-owned subsidiary of Utilities, Inc. (UI). The Utility's last rate case was in 2012.[1]

[1] 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.*

The petition for a limited proceeding was filed pursuant to Rule 25-30.446, Florida Administrative Code (F.A.C.). Driving the limited proceeding were (1) galvanized service line replacement costs in Marion County, (2) loss of irrigation customers, plant additions, and purchased water costs in Pasco County, and (3) interconnection plant addition costs in Seminole County. [2]

On March 24, 2016, the Office of Public Counsel (OPC) filed its notice of intervention in this proceeding, and an Order acknowledging intervention was issued on April 4, 2016.[3] Prior to the notice of intervention, OPC submitted a letter, dated February 2, 2016, outlining concerns that OPC had with the Utility's petition for Marion, Pasco, and Seminole Counties.[4] UIF responded to OPC's concerns in a letter dated March 2, 2016.[5]

An estimated 500 customers attended the 2 customer meetings held in New Port Richey (Pasco County) on April 12, 2016, with 175 customers providing comments. No customers attended the meeting held on April 13, 2016, in Ocala for the customers in Marion and Seminole Counties.

UIF notified the Commission of its intent to file an application for a rate increase on April 28, 2016, for all regulated systems in Florida. Docket No. 160101-WS was assigned to the forthcoming proceeding.[6] The Minimum Filing Requirements are due no later than September 30, 2016, and will be based on a historic test year ended December 31, 2015.

By letter dated June 8, 2016, UIF requested that the portion of this limited proceeding addressing a rate increase in Pasco County be bifurcated from the portion addressing rate increases in Marion and Seminole Counties.[7] OPC filed a response to UIF's bifurcation request on June 13, 2016.[8] As a result of the bifurcation, rate increases were addressed at the July 7, 2016 Commission Conference for Marion and Seminole Counties only. The Commission's vote on the limited proceeding for Marion and Seminole Counties was codified in Order No. PSC-16-0296-PAA-WS, issued July 27, 2016. A consummating order was issued in Order No. PSC-16-0342-CO-WS on August 22, 2016.

[2] On April 12, 2016, the Commission acknowledged the reorganization and name change of UI's systems in Florida. The instant docket applies only to the former Utilities, Inc. of Florida systems, and does not include Labrador Utilities, Inc. in Pasco County. Order No. PSC-16-0143-FOF-WS, issued April 12, 2016, in Docket No. 150235-WS, *In re: Joint application for acknowledgement of corporate reorganization and request for approval of name changes on water and/or wastewater certificates of Cypress Lakes Utilities, Inc. in Polk County; Utilities, Inc. of Eagle Ridge in Lee County; Utilities, Inc. of Florida in Marion, Orange, Pasco, Pinellas, and Seminole Counties; Labrador Utilities, Inc. in Pasco County; Lake Placid Utilities, Inc. in Highlands County; Lake Utility Services, Inc. in Lake County; Utilities, Inc. of Longwood in Seminole County; Mid-County Services, Inc. in Pinellas County; Utilities, Inc. of Pennbrooke in Lake County; Utilities, Inc. of Sandalhaven in Charlotte County; Sanlando Utilities Corporation in Seminole County; and Tierra Verde Utilities, Inc. in Pinellas County, to Utilities, Inc. of Florida.*
[3] Order No. PSC-16-0135-PCO-WS
[4] Document No. 00669-16
[5] Document No. 01120-16
[6] Docket No. 160101-WS, *In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.*
[7] Document No. 03459-16
[8] Document No. 03641-16

In its initial filing, UIF's request for Pasco County was separated into Phase I regarding the loss of revenue associated with customer-installed irrigation wells, and Phase II associated with UIF's interconnection to Pasco County for bulk provision of water to UIF's Summertree customers. By letter dated August 11, 2016, the Utility advised the Commission that it was withdrawing its request for the Phase I rate increase for Pasco County to be deferred and considered later in the consolidated rate case docket.[9] On August 18, 2016, OPC submitted a letter in this docket requesting a deferral of the decision to consider any rate increase until (1) the actual amount of any Southwest Florida Water Management District (SWFWMD) grants have been taken into account; (2) any possible overearnings have been evaluated; (3) any potential customer savings from the UIF consolidation have been evaluated; and (4) the quality of water service issues have been addressed and resolved.[10]

The Phase I rate increase for Pasco County will be addressed in the forthcoming rate case in Docket No. 160101-WS. This recommendation only addresses the requested Phase II rate increase directly related to the interconnection with Pasco County to address water quality issues.

The Commission has jurisdiction pursuant to Sections 367.081 and 367.0822, Florida Statutes (F.S.).

[9] Document No. 06480-16
[10] Document No. 06823-16

Discussion of Issues

Issue 1: Should the Utility's requested increase associated with the Pasco County Interconnect Phase II be approved?

Recommendation: Yes, as modified by staff.

- The Commission should approve a water rate increase of $46,944 (or 5.35 percent) for Pasco County Phase II.

- In addition, the estimated $200,000 net cost to retire the abandoned wells should be reviewed in the forthcoming consolidated rate case in Docket No. 160161-WS.

- Further, UIF should be directed to provide secondary water quality results for portions of its Summertree distribution system at least every six months. Samples should be taken from the same sites labeled "nearby system site" shown in Appendix A of the CPH Engineering Report for consistency purposes. Such results should be filed with the Commission for informational purposes. The first report should be filed no later than two months after the completion of the interconnection with Pasco County.

- Pursuant to Order No. PSC-14-0025-PAA-WS, the 100-basis point reduction in return on equity and water testing requirement should remain in place until the water quality is deemed satisfactory by the Commission. (Slemkewicz, Mtenga, Hudson)

Staff Analysis: As a result of UIF's withdrawal of its Pasco County Phase I request, staff has modified the Utility's original request for Pasco County Phase II to recognize rate case expense in operating expense. Staff also reduced the annualized revenues to reflect the effects of the loss of irrigation customers. Accordingly, the requested rate increase is $52,547 (or 6.05 percent) as shown on Schedule No. 1. Staff's analysis is based on the modified amounts. However, with regard to UIF's calculated rate increase of $52,547 (or 6.05 percent) for Pasco County Phase II, staff would note that the Utility made one error in its calculation of the income subject to state and federal income taxes. In calculating the taxable income amount, UIF multiplied the decreased rate base amount by the total overall ROR of 8.03 percent. The proper calculation would be to multiply the decreased rate base amount by only the common equity weighted cost component of the ROR. In its calculation, staff used a common equity weighted cost component of 4.41 percent rather than the total overall ROR of 7.22 percent. Based on its adjustments, staff has calculated a water rate increase of $46,994 (or 5.35 percent) for Pasco County Phase II as shown in Schedule No. 1.

Rate Base

The Utility requested a rate base reduction of $356,579 to reflect the abandonment of water wells in Pasco County Phase II. The rate base components were Retirements and Cash Working Capital.

Retirements

In its filing, UIF reduced rate base by the net book value of $363,697 for the retirement of the abandoned wells.

By Order No. PSC-14-0025-PAA-WS (2014 Order), the Commission found the quality of water in the Summertree water system to be unsatisfactory and ordered that the revenue requirement for the Summertree water system be subject to a 100-basis point reduction in return on equity (or approximately $23,115 annually) until the Utility demonstrated that the water quality had been restored to the point where it is deemed satisfactory by this Commission.[11] To address the water quality issues, the Commission ordered several future actions that would need to be taken by the Utility to satisfy the concerns of its customers:

- Coordinate with the OPC to develop a customer engagement plan;
- identify suitable treatment options to address the secondary water quality issues including an estimated rate impact to customers;
- consider the cost and feasibility of connecting to the Pasco County water system with the purchase of bulk water from the County; and
- present options to Summertree customers and conduct a survey to determine customer preferences.

As directed by the 2014 Order, OPC, who was the facilitator, coordinated community meetings between the Utility and Summertree residents beginning in January 2014. A total of 30 meetings were held from 2014 through 2016 in a group consisting of representatives of the Summertree residents, the Utility, OPC and in some instances Pasco County Commissioners and/or Florida State Legislators. OPC compiled thorough minutes of the meetings and provided periodic updates to Commission staff.

On April 28, 2014, a meeting was held to discuss the treatment alternatives analysis report prepared by CPH Engineering (CPH Report)[12] that was submitted by UIF to the group. The CPH Report outlined three possible solutions to the water quality issues: construction of a centralized water treatment plant with upgraded treatment; upgraded water treatment at each well site; or interconnection with Pasco County. As noted on pages 8 and 10 of the CPH Report, the elevated color concentrations in the distribution system were most likely due to the buildup of biomass. Specifically, the CPH Report recommended that prior to any treatment modifications, the Utility should "thoroughly flush the distribution system to remove any [possible] biomass in the system and repeat the flushing process at least annually." The CPH Report also indicated that interconnecting with Pasco County would require the Utility to decommission its four production wells and each of their associated water treatment facilities to conform to the rules and regulations of the Southwest Florida Water Management District. The CPH Report concluded that the interconnection was the lowest cost option that would provide improved water quality with respect to iron, odor and color. The CPH Report ultimately recommended that "Utilities Inc. of Florida pursue a potable water interconnection with Pasco County, including a thorough cleaning of the distribution system."

[11]Order No. PSC-14-0025-PAA-WS, issued January 10, 2014, in Docket 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*, pp.4-8.
[12] Document No. 05631-16

In accordance with the 2014 Order, OPC coordinated subsequent meetings between the Utility and representatives of Summertree residents to discuss the different options, with UIF ultimately proposing the recommendation of the Pasco County Interconnection. To solicit customer input, OPC organized a survey ballot, the language of which was finalized in January 2016. The ballot asked the residents whether Summertree should interconnect with Pasco County and to rate the quality of water service provided by UIF. Ballots were mailed to approximately 1,172 customers in March 2016. A total of 876 valid survey responses were returned with 830 of the residents voting in favor of the interconnection and 746 rating the quality of service as unsatisfactory. As noted in the case background, 175 customers provided comments at the April 12, 2016 customer meetings. The majority of the comments focused on the unsatisfactory quality of service provided by UIF.

While the interconnection with Pasco County should improve water quality, the final impact on water quality can be determined only after the completion of the interconnection and the implementation of a flushing protocol. Therefore, the Utility should be directed to provide secondary water quality results for portions of its Summertree distribution system at least every six months until the Commission finds the water quality to be satisfactory. Samples should be taken from the same sites labeled "nearby system site" shown in Appendix A of the CPH Report for consistency purposes. Such results should be filed with the Commission for informational purposes. The first report should be filed no later than two months after the completion of the interconnection with Pasco County. Pursuant to the 2014 Order, the 100-basis point reduction in return on equity should remain in place until the Utility can demonstrate that the water quality is deemed satisfactory by the Commission.

As previously discussed, the abandonment of the wells and the interconnection with Pasco County was considered to be the lowest cost option. Staff would note that the Bulk Water Agreement with Pasco County provides that the $896,141 initial connection fee[13] will be paid for by Pasco County from a grant provided by the Florida Department of Environmental Protection (FDEP).[14] Staff recommends that rate base be reduced by the $363,697 net book value of the abandoned wells to reflect their removal from rate base.

Working Capital Allowance

UIF included a working capital allowance of $7,118 for Pasco County Phase II. This amount represents 1/8th of the O&M expense increase of $56,941. However, staff has made several adjustments to O&M expense that increased the O&M expense to $62,484 as explained in the "O&M Expense" section. As a result, staff recommends that the appropriate amount of incremental working capital is $7,811 ($62,484÷8), or $693 higher than the amount included by UIF.

After reviewing UIF's requested rate base decrease of $356,579, staff recommends that rate base be decreased by $355,886 for Pasco County Phase II as shown on Schedule No. 1. The $693 difference reflects the change in working capital.

[13] Document No. 07078-16, p.4
[14] Document No. 06923-16

Rate of Return

Per Schedule No. 11 of its filing, UIF calculated an 8.03 percent rate of return (ROR). This ROR was based on a capital structure ended December 31, 2014, that only included long-term debt with a cost rate of 6.65 percent and common equity with a return on equity of 9.38 percent. The capital structure used by UIF is inconsistent with the capital structure used in the Utility's last rate case for Pasco County.[15] In addition, Rule 25-30.445(4)(e), F.A.C., requires that the weighted average cost of capital be calculated based on the most recent 12-month period and include all of the appropriate capital structure components. In this instance, the most recent period available is the 12 months ended December 31, 2015. UIF calculated a December 2015 ROR of 7.85 percent on Schedule F-5 of its 2015 Annual Report. However, UIF did not use the appropriate equity cost rate of 9.38 percent or the minimum 2.00 percent cost rate for customer deposits pursuant to Rule 25-30.311(4)(a), F.A.C. Based on the foregoing, staff recalculated a December 2015 ROR of 7.22 percent as shown in Schedule No. 2.

Operating Expense

UIF requested an increase to operating expense, excluding income taxes, of $89,692 for Pasco County Phase II. The increase is based on increases for the abandoned well amortization, purchased water expense, and rate case expense that are partially offset by decreases in depreciation expense, O&M expense, and taxes other than income.

Depreciation Expense

UIF decreased its depreciation expense by $22,778 as a result of the abandonment of the water wells. In staff's review of the Utility's filing, it was noted that an $804 contributions in aid of construction component of the depreciation expense was not included in the total amount. Otherwise, the calculation of the depreciation expense reduction is in accordance with Rule 25-30.140, F.A.C. The inclusion of the $804 CIAC component lowers the total depreciation expense reduction to $21,974.

Abandoned Wells Amortization Expense

UIF calculated an annual amortization expense of $65,022 for the recovery of the $563,697 related to the retirement of the abandoned wells. This represents an 8.67 year amortization period. The $563,697 is the sum of the $363,697 net book value and the $200,000 net cost to retire the abandoned wells. On Schedule No. 16 of its filing, UIF estimated that the gross cost to retire the abandoned wells was $220,000. The Utility reduced the gross amount by $20,000 for anticipated SWFWMD funding resulting in a net retirement cost of $200,000. These amounts have been reviewed by staff and appear to be appropriate. Because the $220,000 gross retirement cost and the $20,000 of anticipated State funding are only estimates, staff believes that these amounts should be reviewed in the upcoming consolidated rate case and be adjusted if needed.

Rule 25-30.433(9), F.A.C., prescribes the calculation for determining the appropriate amortization period for forced abandonment or the prudent retirement of plant assets prior to the end of their depreciable life. Based on the amounts in its filing, UIF followed the specified calculation except for the return on net book value amount. The Utility applied the 8.03 percent

[15] 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,* p.65.

rate of return to the total cost of $563,697 rather than just the net book value of $363,697. Rule 25-30.433(9), F.A.C., specifically states that the amount should be "equal to the rate of return that would have been allowed on the net invested plant that would have been included in rate base before the abandonment or retirement."

In its calculation, staff used its recommended 7.22 percent rate of return and applied it against the net book value of $363,697. This results in an annual amortization expense of $45,994 and an amortization period of 12.26 years. UIF and staff's calculations are summarized in Table 1-1 below.

Table 1-1
Abandoned Wells Amortization Expense Increase

	UIF	STAFF
Net Book Value	$363,697	$363,697
Net Cost to Retire	200,000	200,000
Total Cost	$563,697	$563,697
Rate of Return	8.03%	7.22%
Return on Net Book Value	$45,287	$26,259
Depreciation Expense	19,735	19,735
Annual Amortization Expense	$65,022	$45,994
Amortization Period	8.67 Years	12.26 Years

O&M Expense

UIF requested an increase of $56,941 to O&M expense. The increase is based on increases for purchased water expense and rate case expense that are partially offset by a decrease in O&M expense related to the abandoned wells.

Well Abandonment O&M Expense

UIF included an O&M expense decrease of $46,245 related to the well abandonments.[16] This was an annualized amount based on actual O&M expenses for the 11 months ended November 30, 2015. In response to a staff data request, the Utility updated the amounts to include the actual amounts for the 12 months ended December 31, 2015. This resulted in a $48,609 decrease in O&M expenses.[17] Staff has reviewed the items included in the O&M expense reduction and they appear to be appropriate. The calculation of the $48,609 O&M expense reduction is shown in Table 1-2 below.

[16] UIF Petition, Schedule No. 17
[17] Document No. 00869-16, Staff's First Data Request No. 3

Table 1-2
Well Abandonment O&M Expense

Expense Category	Amount
Electric Power – Water System	$10,453
Chemicals	11,769
Outside Service Expense	1,260
Salaries and Wages	3,000
Fleet Transportation Expense	1,000
Maintenance Testing	6,000
Maintenance – Water Plant	15,127
Total O&M Decrease	$48,609

Purchased Water Expense

UIF sold 55.5 million gallons of water in the Summertree subdivision during 2014. In calculating the purchased water expense necessary to replace the water previously produced by its abandoned wells, the Utility reduced the gallons sold by 32.4 million gallons to reflect the reduction in irrigation-related sales. In determining the total gallons of water to be purchased, UIF added 2.3 million gallons (10 percent) for flushing and another 2.3 million gallons (10 percent) for other losses. Per Rule 25-30.4325(1)(e), F.A.C., excessive unaccounted for water (EUW) is unaccounted water in excess of 10 percent of the amount of water produced. In rate cases, it is Commission practice to only make EUW adjustments if the 10 percent threshold is exceeded.[18] In staff's opinion, UIF's estimated 10 percent factor for "other losses" appears to be reasonable. UIF then calculated an estimated purchased water expense of $99,101 based on the purchase of 27.8 million gallons from Pasco County at a bulk water rate of $3.57/Kgal. Staff has reviewed the Utility's calculation methodology and agrees that it is appropriate.

In response to a staff data request concerning the possible inclusion of duplicate bills in its calculation on Schedule No. 15 of its filing, UIF updated the amount of the reduced irrigation gallons to 30.7 million.[19] Using UIF's methodology and the updated amount of reduced irrigation gallons, staff has calculated a purchased water expense of $106,398. A comparison of the Utility's calculation and staff's calculation is presented in Table 1-3 below.

[18] 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*, p.8.
[19] Document No. 00869-16, Staff's First Data Request No. 21.

Table 1-3
Pasco County Phase II Purchased Water Expense Calculation

	UIF	Staff
Total Gallons Sold – Summertree (2014)	55,541,000	55,541,000
Irrigation Gallons Reduction	(32,408,260)	(30,704,830)
Gallons Difference	23,132,740	24,836,170
Water Gallons Needed for Flushing (10%)	2,313,274	2,483,617
Other Losses (10%)	2,313,274	2,483,617
Total Water Needed From Pasco County	27,759,288	29,803,404
Bulk Water Rate ($/Kgal)	$3.57	$3.57
Total Cost of Purchased Water	$99,101	$106,398

Rate Case Expense

UIF estimated that rate case expense would be $16,338, resulting in a 4-year amortization of $4,085. In its petition, UIF included all of the rate case expense associated with the Pasco County portion of the filing in the Phase I portion of its filing. Staff has included the rate case expense related to Pasco County in Phase II because the primary focus of Phase I was to calculate the gallonage reduction related to the loss of irrigation customers. This information is required to calculate the appropriate purchased water expense for Phase II. Based on the decision in Order No. PSC-16-0296-PAA-WS,[20] which addressed the amount of rate case expense related to Marion and Seminole Counties, and updated amounts for Pasco County from the Utility,[21] staff has calculated a rate case expense for Pasco County of $18,780, resulting in a 4-year amortization of $4,695 as shown on Schedule No. 3. The 4-year rate reduction for rate case expense is $4,906.

Based on staff's adjustments, the recommended net increase in O&M expense is $62,484.

Taxes Other Than Income

The Utility included decreased taxes other than income (TOTI) of $9,493. The reduction was due to a decrease in property taxes as a result of the retirement of the wells. Staff has made an adjustment to recognize the effect on payroll taxes from the $3,000 reduction in O&M salary expense. The FICA,[22] FUTA[23] and SUTA[24] composite rate is 14.67 percent. The resulting adjustment is a reduction of $440 ($3,000 x 14.67 percent). The adjusted total TOTI reduction is $9,933.

Based on staff's review, the appropriate operating expense increase, excluding income taxes, is $76,571 as shown in Schedule No. 1 attached to this recommendation.

[20] Order No. PSC-16-0296-PAA-WS, issued July 27, 2016.
[21] Document No. 05631-16
[22] Federal Insurance Contributions Act (7.65 percent)
[23] Federal Unemployment Tax Act (6.00 percent)
[24] State Unemployment Tax Act (1.02 percent)

Calculation of Water Rate Increase

UIF calculated a rate increase of $52,547 (or 6.05 percent) for Pasco County Phase II. Based on the adjustments discussed above, staff has calculated a water rate increase of $46,994 (or 5.35 percent) for Pasco County Phase II as shown in Schedule No. 1.

Issue 2: What is the appropriate application of the recommended rate increase and the effective date and implementation date?

Recommendation:

- Staff's recommended rate increase of 5.35 percent for Pasco County should be applied as an across-the-board increase to existing service rates for the Orangewood and Summertree systems.

- The rates, as shown on Schedule No. 4, 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. 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 the interconnection is in-service and 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.

The 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 4-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. (Johnson)

Staff Analysis: Staff recommends that service rates for UIF be designed to allow the Utility the opportunity to generate annual service revenues of $924,616 for Pasco County. The annualized service revenues before the rate increase are $877,622,[25] resulting in a $46,994 increase to services revenues. The corresponding percentage increase of 5.35 percent should be applied as an across-the-board increase to existing service rates.

Staff recommends that the rate increase of 5.35 percent for Pasco County be applied as an across-the-board increase to existing service rates for the Orangewood and Summertree systems. The rates, as shown on Schedule No. 4, 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. 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 the interconnection is in-service and 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. The rates should be reduced as shown on Schedule Nos. 5 & 6, to remove rate case expense grossed up for regulatory assessment fees and amortized over a 4-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.

[25] Document No. 06975-16

Issue 3: Should the recommended rates be approved for the Utility on a temporary basis, subject to refund with interest, in the event of a protest filed by a party whose interests are substantially affected other than the Utility?

Recommendation: Yes. 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 whose interests are substantially affected other than the Utility. UIF 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 after the interconnection is in-service, staff has approved the proposed notice, the notice has been received by the customers, and only after the Utility has provided written guarantee of its corporate undertaking in a cumulative amount of $72,846. If the recommended rates are approved on a temporary basis, the rates collected by the Utility should be subject to the refund provisions discussed 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 20th of each month indicating the monthly and total amount of money subject to refund at the end of the preceding month. (Mouring, Slemkewicz, D. Buys, Mapp)

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. As a result, staff recommends that the recommended rates be approved as temporary rates.

Section 367.0822(1), F.S., provides

> Upon petition or by its own motion, the commission may conduct limited proceedings to consider, and action upon, any matter within its jurisdiction, including any matter the resolution of which requires a utility to adjust its rates. The commission shall determine the issues to be considered during such a proceeding and may grant or deny any request to expand the scope of the proceeding to include other related matters. However, unless the issue of rate of return is specifically address in the limited proceeding, the commission shall not adjust rates if the effect of the adjustment would be to change the last authorized rate of return.

While Section 367.0822(1), F.S. does not expressly provide for the granting of temporary rates, it is well settled Commission precedent that temporary rates in the event of a protest may be approved on a case-by-case basis.[26]

[26] Order No. PSC-09-0651-PAA-SU, issued September 28, 2009, in Docket No. 090121-SU, *In re: Application for limited proceeding rate increase in Seminole County by Alafaya Utilities, Inc.*; and Order No. PSC-10-0682-PAA-WS, issued November 15, 2010, in Docket No. 090349-WS, *In re: Application for limited proceeding rate increase in Polk County by Cypress Lakes Utilities, Inc.*

Further, Section 367.081(2), F.S., provides that this Commission must fix rates that are just, reasonable, compensatory, and not unfairly discriminatory. Pursuant to its authority to grant just and reasonable rates, the Commission has granted emergency and temporary rates in limited proceedings where a timely protest might delay what may be a justified rate increase resulting in an unrecoverable loss of revenue to the Utility. Similarly, in the instant case, staff believes that the granting of temporary rates is warranted because a timely protest of the PAA Order may delay a justified rate increase for several months while the matter is adjudicated at hearing. Moreover, staff believes that the ratepayers are adequately protected because all rates collected by the Utility will be subject to the corporate undertaking as discussed below.

For the foregoing reasons, staff believes that the recommended rates should be approved for the Utility on a temporary basis, subject to the corporate undertaking discussed below. In order to ensure that the Utility may not unfairly benefit from the issuance of temporary rates and in order to comport with the granting of temporary rates in proceedings filed pursuant to Sections 367.081 and 367.0814, F.S., staff further recommends that temporary rates only be allowed in the event of a protest filed by an entity or individual other than the Utility

Corporate Undertaking Memorandum

UIF is a wholly-owned subsidiary of UI, which provides all investor capital to its subsidiaries. Based on the amount subject to refund for Pasco County, the incremental increase in UI's corporate undertaking is $30,925. In Order No. PSC-16-0296-PAA-WS, the Commission approved UI's request for a corporate undertaking for Marion and Seminole Counties of $30,961 and $10,960, respectively. The total corporate undertaking amount currently outstanding is $41,921. Based on the amount subject to refund for Pasco County, the total cumulative outstanding guarantee would increase to $72,846.

The criteria for a corporate undertaking include sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. Staff reviewed UI's 2013, 2014, and 2015 financial statements to determine if the company can support a corporate undertaking on behalf of its subsidiary. In its 2013 financial statements, UI reported an insufficient working capital amount and an inadequate current ratio and interest coverage ratio. In 2014, UI reported insufficient working capital and an inadequate current ratio; however, the interest coverage ratio improved to adequate. In 2015, UI had sufficient working capital, and both the current ratio and interest coverage ratio were adequate. In addition, UI achieved sufficient profitability and reported adequate ownership equity over the entire 3-year review period.

Based on staff's review of the financial reports submitted by UI, staff believes UI has adequate resources to support a corporate undertaking in the amount requested. Based on this analysis, staff recommends that a cumulative corporate undertaking of $72,846 is acceptable contingent upon receipt of the written guarantee of UI and written confirmation that the cumulative outstanding guarantees on behalf of UI-owned utilities in other states will not exceed $1.2 million (inclusive of all Florida utilities).

The brief financial analysis above is only appropriate for deciding if UI can support a corporate undertaking in the amount proposed and should not be considered a finding regarding staff's position on other issues in this proceeding.

The Utility should maintain a record of the amount of the corporate undertaking memorandum, 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 20th of each month indicating the monthly and total amount of money subject to refund at the end of the preceding month.

Further, 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.

Conclusion

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. UIF 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 after the interconnection is in-service and staff has approved the proposed notice, and the notice has been received by the customers. The temporary rates should only be implemented after the Utility has provided written guarantee of its corporate undertaking in a cumulative amount of $72,846. If the recommended rates are approved on a temporary basis, the rates collected by the Utility should be subject to the refund provisions discussed in staff's 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 20th of each month indicating the monthly and total amount of money subject to refund at the end of the preceding month.

Issue 4: 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, a consummating order should 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. Once these actions are complete, this docket should be closed administratively. (Mapp)

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 revised tariff sheets and customer notice have been filed by the Utility and approved by staff. Once these actions are complete, this docket should be closed administratively.

UTILITIES, INC. OF FLORIDA - PASCO COUNTY - PHASE II WATER REVENUE REQUIREMENTS INCREASE				SCHEDULE NO. 1 DOCKET NO. 150269-WS
		MODIFIED UTILITY FILING (a)(b)(c)		STAFF RECOMMENDATION
Line No.				
1	Utility Plant in Service (UPIS)	-		-
2	Retirements	($363,697)		($363,697)
3	Accumulated Depreciation	-		-
4	Contributions in Aid of Construction (CIAC)	-		-
5	Accumulated Amortization of CIAC	-		-
6	Cash Working Capital	7,118		7,811
7	Total Increase in Rate Base	($356,579)		($355,886)
8	Weighted Cost of Capital	8.03%		7.22%
9	Return Required	($28,633)		($25,695)
10	Decrease in Depreciation Expense Due to Retirements	($22,778)		($21,974)
11	Increase in Recovery of Abandoned Wells	65,022		45,994
12	Increase in CIAC Amortization	-		-
13	Decrease in O&M from Well Abandonments	(46,245)		(48,609)
14	Increase In O&M for Purchased Water Expense	99,101		106,398
15	Increase in Rate Case Expense	4,085	(c)	4,695
16	Decrease in Taxes Other Than Income Taxes	(9,493)		(9,933)
17	Total Increase in Operating Expenses Before Income Taxes	$89,692		$76,571
18	Total Taxable Income	($28,633)		($15,695)
19	Multiply by State Income Tax (5.5%)	(1,575)		(863)
20	Total Federal Taxable Income	($27,058)		($14,831)
21	Multiply by Federal Income Tax (34%)	(9,200)		(5,043)
22	Total Revenue Increase Before RAF (L9 + L17 + L19 + L21)	$50,284		$44,970
23	Multiply by RAF (4.5%)	2,263		2,024
24	Total Water Revenue Increase	$52,547		$46,994
25	Annualized Revenues	$868,816	(a)(b)	$877,622
26	Percentage Increase in Rates	6.05%		5.35%
27	4-Year Rate Reduction (Rate Case Expense)			$4,906

NOTES:
(a) Adjusted by staff to exclude the Pasco County - Phase I increase
(b) Adjusted by staff to exclude revenues for reduced irrigation customer volumes
(c) Adjusted by staff to include rate case expense

UTILITIES, INC. OF FLORIDA CAPITAL STRUCTURE DECEMBER 31, 2015			SCHEDULE NO. 2 DOCKET NO. 150269-WS	
	AMOUNT	**RATIO**	**COST RATE**	**WEIGHTED COST**
PER 2015 ANNUAL REPORT				
Common Equity	$5,330,494	46.96%	10.69%	5.02%
Preferred Stock	-	0.00%	0.00%	0.00%
Long Term Debt	4,751,261	41.86%	6.66%	2.79%
Short Term Debt	14,899	0.13%	10.08%	0.01%
Customer Deposits	53,988	0.48%	6.00%	0.03%
Tax Credits - Wtd. Cost	-	0.00%	0.00%	0.00%
Deferred Income Taxes	1,199,429	10.57%	0.00%	0.00%
Total	$11,350,071	100.00%		7.85%
STAFF RECOMMENDATION				
Common Equity	$5,330,494	46.96%	9.38%	4.41%
Preferred Stock	-	0.00%	0.00%	0.00%
Long Term Debt	4,751,261	41.86%	6.66%	2.79%
Short Term Debt	14,899	0.13%	10.08%	0.01%
Customer Deposits	53,988	0.48%	2.00%	0.01%
Tax Credits - Wtd. Cost	-	0.00%	0.00%	0.00%
Deferred Income Taxes	1,199,429	10.57%	0.00%	0.00%
Total	$11,350,071	100.00%		7.22%

UTILITIES, INC. OF FLORIDA - PASCO COUNTY - PHASE II				SCHEDULE NO. 3
RATE CASE EXPENSE				DOCKET NO. 150269-WS
	UIF FILING PHASE I	EXPENSES (a) AS OF 7/7/16	ADDITIONAL EXPENSES (b)	UPDATED TOTAL
Filing Fee	$750	$750	$0	$750
Legal Fees	12,000	7,152	7,020	14,172
Legal Expenses	0	843	515	1,358
Customer Notices	2,840	1,963	0	1,963
FedEx	0	103	0	103
UIF Travel Costs	749	0	434	434
Total Rate Case Expense	$16,339	$10,811	$7,969	$18,780
4-Year Amortization	$4,085			$4,695

Notes:
(a) Document No. 04394-16
(b) Document No. 05631-16

UTILITIES, INC. OF FLORIDA - PASCO COUNTY MONTHLY WATER RATES	UTILITY CURRENT RATES	STAFF RECOMMENDED RATES	SCHEDULE NO. 4 DOCKET NO. 150269-WS 4 YEAR RATE REDUCTION
Residential and General Service - Orangewood			
Base Facility Charge by Meter Size			
5/8"X 3/4"	$11.81	$12.44	$0.07
3/4"	$17.72	$18.66	$0.10
1"	$29.53	$31.10	$0.16
1-1/2"	$59.03	$62.20	$0.33
2"	$94.45	$99.52	$0.53
3"	$188.90	$199.04	$1.05
4"	$295.17	$311.00	$1.65
6"	$590.33	$622.00	$3.30
Charge per 1,000 gallons	$5.45	$5.74	$0.03
Residential and General Service - Summertree			
Base Facility Charge by Meter Size			
5/8"X 3/4"	$11.19	$11.79	$0.06
3/4"	$16.78	$17.69	$0.09
1"	$27.96	$29.48	$0.16
1-1/2"	$55.91	$58.95	$0.31
2"	$89.45	$94.32	$0.50
3"	$178.91	$188.64	$1.00
4"	$279.55	$294.75	$1.56
6"	$549.02	$589.50	$3.12
Charge per 1,000 gallons	$5.17	$5.45	$0.03
Typical Residential 5/8" x 3/4" Meter Bill Comparison - Orangewood			
2,000 Gallons	$22.71	$23.92	
6,000 Gallons	$44.51	$46.88	
10,000 Gallons	$66.31	$69.84	
Typical Residential 5/8" x 3/4" Meter Bill Comparison - Summertree			
2,000 Gallons	$21.53	$22.69	
6,000 Gallons	$42.21	$44.49	
10,000 Gallons	$62.89	$66.29	

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: August 31, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (Lee) PoE
Office of the General Counsel (Lherisson)

RE: Docket No. 160070-EQ – Petition for approval of renewable energy tariff and standard offer contract, by Florida Power & Light Company.

AGENDA: 09/13/16 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Section 366.91(3), Florida Statutes (F.S.), requires that each investor-owned utility (IOU) continuously offers to purchase capacity and energy from renewable generating facilities and small qualifying facilities. Florida Public Service Commission (Commission) Rules 25-17.200 through 25-17.310, Florida Administrative Code (F.A.C.), implement the statute and require each IOU to file with the Commission by April 1 of each year, a standard offer contract based on the next avoidable fossil fueled generating unit of each technology type identified in the utility's current Ten-Year Site Plan. On April 1, 2016, Florida Power & Light Company (FPL) filed a petition for approval of its revised standard offer contract and rate schedule based on its 2016 Ten-Year Site Plan. The Commission has jurisdiction over this standard offer contract pursuant to Sections 366.04 through 366.06 and 366.91, F.S.

Discussion of Issues

Issue 1: Should the Commission approve the revised renewable energy tariff and standard offer contract filed by Florida Power & Light Company?

Recommendation: Yes. The provisions of FPL's revised renewable energy tariff and standard offer contract conform to all requirements of Rules 25-17.200 through 25-17.310, F.A.C. FPL's revised standard offer contract provides flexibility in the arrangements for payments so that a developer of renewable generation may select the payment stream best suited to its financial needs. (Lee)

Staff Analysis: Rule 25-17.250, F.A.C., requires that FPL, an IOU, continuously makes available a standard offer contract for the purchase of firm capacity and energy from renewable generating facilities (RF) and small qualifying facilities (QF) with design capacities of 100 kilowatts (kW) or less. Pursuant to Rules 25-17.250(1) and (3), F.A.C., the standard offer contract must provide a term of at least 10 years, and the payment terms must be based on the utility's next avoidable fossil-fueled generating unit identified in its most recent Ten-Year Site Plan or, if no avoided unit is identified, its next avoidable planned purchase.

FPL has identified a 1,622 megawatt (MW) natural gas-fired facility of the combined cycle (CC) technology type as the next fossil-fueled generating unit in its 2016 Ten-Year Site Plan. The projected in-service date of this unit is June 1, 2024.

The RF/QF operator may elect to make no commitment as to the quantity or timing of its deliveries to FPL, and to have a committed capacity of zero (0) MW. Under such a scenario, the energy is delivered on an as-available basis and the operator receives only an energy payment. Alternatively, the RF/QF operator may elect to commit to certain minimum performance requirements based on the identified avoided unit, such as, being operational and delivering an agreed upon amount of capacity by the in-service date of the avoided unit, and thereby becomes eligible for capacity payments in addition to payments received for energy. The standard offer contract may also serve as a starting point for negotiation of contract terms by providing payment information to an RF/QF operator, in a situation where one or both parties desire particular contract terms other than those established in the standard offer.

In order to promote renewable generation, the Commission requires the IOU to offer multiple options for capacity payments, including the options to receive early or levelized payments. If the RF/QF operator elects to receive capacity payments under the normal or levelized contract options, it will receive as-available energy payments only until the in-service date of the avoided unit (in this case June 1, 2024), and thereafter, begin receiving capacity payments in addition to the energy payments. If either the early or early levelized option is selected, then the operator will begin receiving capacity payments earlier than the in-service date of the avoided unit. However, payments made under the early capacity payment options tend to be lower in the later years of the contract term because the net present value (NPV) of the total payments must remain equal for all contract payment options.

Table 1 below, contains FPL's estimates of the annual payments for each payment option available under the revised standard offer contract to an operator with a 50 MW facility operating at a capacity factor of 94 percent, which is the minimum capacity factor required under the contract to qualify for full capacity payments. Normal and levelized capacity payments begin in 2024, reflecting the projected in-service date of the avoided CC unit (June 1, 2024).

Table 1 – Estimated Annual Payments to a 50 MW Renewable Facility (94% Capacity Factor)

Year	Energy Payment	Capacity Payment (By Type)			
		Normal	Levelized	Early	Early Levelized
	$(000)	$(000)	$(000)	$(000)	$(000)
2017	9,110	-	-	-	-
2018	11,560	-	-	-	-
2019	11,658	-	-	-	-
2020	11,149	-	-	3,303	3,759
2021	12,988	-	-	3,370	3,759
2022	12,441	-	-	3,437	3,759
2023	13,460	-	-	3,506	3,759
2024	15,540	5,230	5,830	3,576	3,759
2025	13,979	5,341	5,830	3,647	3,759
2026	15,069	5,455	5,830	3,720	3,759
2027	16,326	5,572	5,830	3,795	3,759
2028	15,421	5,691	5,830	3,870	3,759
2029	15,646	5,812	5,830	3,948	3,759
2030	16,055	5,936	5,830	4,027	3,759
2031	17,330	6,063	5,830	4,107	3,759
2032	17,813	6,193	5,830	4,190	3,759
2033	17,626	6,325	5,830	4,273	3,759
2034	17,632	6,460	5,830	4,359	3,759
2035	18,702	6,598	5,830	4,446	3,759
2036	19,077	6,739	5,830	4,535	3,759
Total	298,581	77,417	75,791	66,109	63,908
NPV (2017$)	141,046	28,521	28,521	28,521	28,521

FPL's revised renewable energy tariff and standard offer contract, in type-and-strike format, are included as Attachment A to this recommendation. In addition to the revisions to reflect the 2024

CC unit based on FPL's current generation plan, the revised standard offer contract also includes updated provisions regarding the completion/performance security, enhanced notification requirements, and energy price projections. Staff conducted four data requests to address those changes. FPL's response to the last data request was dated August 12, 2016.

In response to staff's data request, FPL described and explained the specific changes that affect the payment amount. FPL projects that the costs associated with power plants will marginally increase in the coming years with the escalation rate for plant costs increasing from 2 percent to 3 percent, as shown in the proposed tariff page 10.311.1. This escalation rate is a factor determining the capacity payments by FPL, so an increase in the escalation rate under the revised standard offer contract results in an increase in capacity payments to the RF/QF operator.

FPL's proposed tariff increases the required initial completion/performance security from $30/kW to $50/kW. This security will then increase to $100/kW two years before the guaranteed capacity delivery date. The current level has not been adjusted since 1999. FPL evaluated the cost to obtain alternative power arrangements in the event of a performance failure using the same methodology for the avoided cost provided in Rule 25-17.0832(6), F.A.C. Based on that, FPL then assessed the appropriate level of completion/performance security to be the proposed amount, so that there is reasonable assurance that the RF/QF operator will satisfy its pre-commercial operation date obligations and compensate FPL and its customers adequately in the event of a performance failure by the operator. Further, the cost for obtaining the letter of credit for the completion/performance security is a fraction of the security amount, therefore this requirement would not cause undue financial burden to sellers.

For similar reasons, the revised standard offer contract contains changes intended to reduce and manage the ratepayer's exposure to risks. Changes were made in notification provisions to shorten the timeframe or to enhance the requirements for the RF/QF operator. For example, in the proposed tariff page 9.037, paragraph 9.3, the timeframe to provide a replacement letter of credit is reduced from 30 days to 10 days.

The revised tariff sheets provide the required capacity payment pricing information, but the as-available energy cost projections and fuel cost projections on tariff pages 10.304 and 10.311 have been removed. FPL has elected to eliminate these as-available energy cost projections, because the tariffs are typically revised only once a year while forecasted energy prices are volatile throughout the year. FPL noted that the fuel costs used in calculating avoided costs for the 2016 standard offer contract have dropped more than 25 percent from those used for the 2015 standard offer contract. Removing these projections only clarifies that as-available energy cost pricing information will be provided upon request to reflect the most current market pricing. Staff notes FPL files actual as-available energy cost monthly with the Commission pursuant to Rule 25-17.0825(4), F.A.C.

Conclusion

The provisions of FPL's revised renewable energy tariff and standard offer contract conform to all requirements of Rules 25-17.200 through 25-17.310, F.A.C. FPL's revised standard offer contract provides flexibility in the arrangements for payments so that a developer of renewable generation my select the payment stream best suited to its financial needs.

Issue 2: Should this docket be closed?

Recommendation: Yes. This docket should be closed upon issuance of a consummating order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. Potential signatories should be aware that, if a timely protest is filed, FPL's standard offer contract may subsequently be revised. (Lherisson)

Staff Analysis: This docket should be closed upon the issuance of a consummating order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. Potential signatories should be aware that, if a timely protest is filed, FPL's standard offer contract may subsequently be revised.

Standard Offer Contract (Schedule QS-2)

Florida Power & Light Company

Revisions in underline and strike-through format
shown the following sheets:

9.030, 9.031, 9.032, 9.032.1, 9.033, 9.034, 9.035, 9.036, 9.037, 9.038,
9.039, 9.040, 9.042, 9.045, 9.047, 10311, 10311.1, and 10312

FLORIDA POWER & LIGHT COMPANY

~~Seventh~~Eighth Revised Sheet No. 9.030
Cancels ~~Sixth~~Seventh Sheet No. 9.030

STANDARD OFFER CONTRACT FOR THE PURCHASE OF CAPACITY AND ENERGY FROM A RENEWABLE ENERGY FACILITY OR A QUALIFYING FACILITY WITH A DESIGN CAPACITY OF 100 KW OR LESS (~~2023~~2024 AVOIDED UNIT)

THIS STANDARD OFFER CONTRACT (the "Contract") is made and entered this ____ day of _____, ____, by and between _____ (herein after "Qualified Seller" or "QS") a corporation/limited liability company organized and existing under the laws of the State of _____ and owner of a Renewable Energy Facility as defined in section 25-17.210 (1) F.A.C. or a Qualifying Facility with a design capacity of 100 KW or less as defined in section 25-17.250, and Florida Power & Light Company (hereinafter "FPL") a corporation organized and existing under the laws of the State of Florida. The QS and FPL shall be jointly identified herein as the "Parties". This Contract contains five Appendices; Appendix A, QS-2 Standard Rate for Purchase of Capacity and Energy; Appendix B, Pay for Performance Provisions; Appendix C, Termination Fee; Appendix D, Detailed Project Information and Appendix E, contract options to be selected by QS.

WITNESSETH:

WHEREAS, the QS desires to sell and deliver, and FPL desires to purchase and receive, firm capacity and energy to be generated by the QS consistent with the terms of this Contract, Section 366.91, Florida Statutes, and/or Florida Public Service Commission ("FPSC") Rules 25-17.082 through 25-17.091, F.A.C. and FPSC Rules 25-17.200 through 25.17.310.F.A.C.

WHEREAS, the QS has signed an interconnection agreement with FPL (the "Interconnection Agreement"), or it has entered into valid and enforceable interconnection/transmission service agreement(s) with the utility (or those utilities) whose transmission facilities are necessary for delivering the firm capacity and energy to FPL (the "Wheeling Agreement(s)");

WHEREAS, the FPSC has approved the form of this Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Renewable Energy Facility or a Qualifying Facility with a design capacity of 100 KW or less; and

WHEREAS, the Facility is capable of delivering firm capacity and energy to FPL for the term of this Contract in a manner consistent with the provisions of this Contract; and

WHEREAS, Section 366.91(3), Florida Statutes, provides that the "prudent and reasonable costs associated with a QS energy contract shall be recovered from the ratepayers of the contracting utility, without differentiating among customer classes, through the appropriate cost-recovery clause mechanism" administered by the FPSC.

NOW, THEREFORE, for mutual consideration the Parties agree as follows:

(Continued on Sheet No. 9.031)

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: ~~August 27, 2016~~

First Revised Sheet No. 9.031
FLORIDA POWER & LIGHT COMPANY Cancels Original Sheet No. 9.031

(Continued from Sheet No. 9.030)

1. QS Facility

The QS contemplates, installing ~~and~~ operating and maintaining a _____ KVA _____ ~~generator~~generating facility located at _____ (hereinafter called the "Facility"). The ~~generator~~Facility is designed to produce a maximum of _____ kilowatts ("KW") of electric power at an 85% lagging to 85% leading power factor. The Facility's location and generation capabilities are as described in the table below.

TECHNOLOGY AND GENERATOR CAPABILITIES	
Location: Specific legal description (e.g., metes and bounds or other legal description with street address required)	**City:** **County:**
Generator Type (Induction or Synchronous)	
Type of Facility (Hydrogen produced from sources other than fossil fuels, biomass as defined in Section 25-17.210 (2) F.A.C., solar energy, geothermal energy, wind energy, ocean energy, hydroelectric power, waste heat from sulfuric acid manufacturing operations: or <100KW cogenerator)	
Technology	
Fuel Type and Source	
Generator Rating (KVA)	
Maximum Capability (KW)	
Minimum Load	
Peaking Capability	
Net Output (KW)	
Power Factor (%)	
Operating Voltage (kV)	
Peak Internal Load KW	

The following sections (a) through (e) are applicable to Renewable Energy Facilities ("REFs") and section (f) is only applicable to Qualifying Facilities with a design capacity of 100 KW or less:

(a) If the QS is a REF, the QS represents and warrants that (i) the sole source(s) of fuel or power used by the Facility to produce energy for sale to FPL during the term of this Contract shall be such sources as are defined in and provided for pursuant to Sections 366.91(2) (a) and (b), Florida Statutes, and FPSC Rules 25-17.210(1) and (2), F.A.C. ; (ii) Fossil fuels ~~must~~shall be limited to the minimum quantities necessary for start-up, shut-down and for operating stability at minimum load. ~~The~~; and (iii) the REF ~~must be~~is capable of generating the amount of capacity pursuant to Section 5 of this Agreement without the use of fossil fuels.

(b) The Parties agree and acknowledge that if the QS is a REF, the QS will not charge for, and FPL shall have no obligation to pay for, any electrical energy produced by the Facility from a source of fuel or power except as specifically provided for in paragraph 1(a) above.

(Continued on Sheet No. 9.032)

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: ~~May 22, 2007~~

FLORIDA POWER & LIGHT COMPANY

~~Ninth~~Tenth Revised Sheet No. 9.032
Cancels ~~Eighth~~Ninth Revised Sheet No. 9.032

(Continued from Sheet No. 9.031)

(c) If the QS is a REF, the QS shall, on an annual basis and within thirty (30) days after the anniversary date of this Contract and on an annual basis thereafter for the term of this Contract, deliver to FPL a report certified by an officer of the QS: (i) stating the type and amount of each source of fuel or power used by the QS to produce energy during the twelve month period prior to the anniversary date (the "Contract Year"); and (ii) verifying that one hundred percent (100%) of all energy sold by the QS to FPL during the Contract Year complies with Sections 1(a) and (b) of this Contract.

(d) If the QS is a REF, the QS represents and warrants that the Facility meets the renewable energy requirements of Section 366.91(2)(a) and (b), Florida Statutes, and FPSC Rules 25-17.210(1) and (2)~~:~~, F.A.C., and that the QS shall continue to meet such requirements throughout the term of this Contract. FPL shall have the right at all times to inspect the Facility and to examine any books, records, or other documents of the QS that FPL deems necessary to verify that the Facility meets such requirements.

(e) The Facility (i) has been certified or has self-certified as a "qualifying facility" pursuant to the Regulations of the Federal Energy Regulatory Commission ("FERC"), or (ii) has been certified by the FPSC as a "qualifying facility" pursuant to Rule 25-17.080(1). A QS that is a qualifying facility with a design capacity of less than 100 KW shall maintain the "qualifying status" of the Facility throughout the term of this Contract. FPL shall have the right at all times to inspect the Facility and to examine any books and records or other documents of the Facility that FPL deems necessary to verify the Facility's qualifying status. On or before March 31 of each year during the term of this Contract, the QS shall provide to FPL a certificate signed by an officer of the QS certifying that the Facility has continuously maintained qualifying status.

2. **Term of Contract**

Except as otherwise provided herein, this Contract shall become effective immediately upon its execution by the Parties (the "Effective Date") and shall have the termination date stated in Appendix E, unless terminated earlier in accordance with the provisions hereof. Notwithstanding the foregoing, if the Capacity Delivery Date (as defined in Section 5.5) of the Facility is not accomplished by the QS before June 1, ~~2023~~,2024, or such later date as may be permitted by FPL pursuant to Section 5 of this Contract, FPL will be permitted to terminate this Contract consistent with the terms herein without further obligations, duties or liability to the QS.

3. **Minimum Specifications**

Following are the minimum specifications pertaining to this Contract:

1. The avoided unit ("Avoided Unit") on which this Contract is based is detailed in Appendix A.

2. This offer shall expire on April 1, ~~2016~~.2017.

3. The date by which firm capacity and energy deliveries from the QS to FPL shall commence is the in-service date of the Avoided Unit (or such later date as may be permitted by FPL pursuant to Section 5 of this contract) unless the QS chooses a capacity payment option that provides for early capacity payments pursuant to the terms of this ~~contract~~Contract.

4. The period of time over which firm capacity and energy shall be delivered from the QS to FPL is as specified in Appendix E; provided, such period shall be no less than a minimum of ten (10) years after the in-service date of the Avoided Unit.

5. The following are the minimum performance standards for the delivery of firm capacity and energy by the QS to qualify for full capacity payments under this Contract:

	On Peak *	All Hours
Availability	94.0%	94.0%

* QS Performance and On Peak hours shall be as measured and/or described in FPL's Rate Schedule QS-2 attached hereto as Appendix A

(Continued on Sheet No. 9.032.1)

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: ~~August 27, 2015~~

FLORIDA POWER & LIGHT COMPANY

~~First~~Second Revised Sheet No. 9.035
Cancels ~~Original~~First Sheet No. 9.035

(Continued from Sheet No. 9.034)

8. Electricity Production and Plant Maintenance Schedule

8.1 During the term of this Contract, no later than sixty (60) days prior to the Capacity Delivery Date and prior to April 1 of each calendar year thereafter, the QS shall submit to FPL in writing a detailed plan of: (~~i~~a) the amount of firm capacity and energy to be generated by the Facility and delivered to the Delivery Point for each month of the following calendar year, and (~~ii~~b) the time, duration and magnitude of any scheduled maintenance period(s) and any anticipated reductions in capacity.

8.2 By October 31 of each calendar year, FPL shall notify the QS in writing whether the requested scheduled maintenance periods in the detailed plan are acceptable. If FPL objects to any of the requested scheduled maintenance periods, FPL shall advise the QS of the time period closest to the requested period(s) when the outage(s) can be scheduled. The QS shall schedule maintenance outages only during periods approved by FPL, such approval not unreasonably withheld. Once the schedule for maintenance has been established and approved by FPL, either Party may request a subsequent change in such schedule and, except when such event is due to Force Majeure, request approval for such change from the other Party, such approval not to be unreasonably withheld or delayed. Scheduled maintenance outage days shall be limited to seven (7) days per calendar year unless the manufacturer's recommendation of maintenance outage days for the technology and equipment used by the Facility exceeds such 7 day period, provided, such number of days is considered reasonable by prudent industry standards and does not exceed two (2) fourteen (14) day intervals, one in the Spring and one in the Fall, in any calendar year. The scheduled maintenance outage days applicable for the QS are _____ days in the Spring and _____ days in the Fall of each calendar year, provided the conditions specified in the previous sentence are ~~met~~satisfied. In no event shall maintenance periods be scheduled during the following periods: June 1 through and including October 31st and December 1 through and including February 28 (or 29th as the case may be).

8.3 The QS shall comply with reasonable requests by FPL regarding day-to-day and hour-by-hour communication between the Parties relative to electricity production and maintenance scheduling.

8.4 Dispatch and Control

8.4.1 The power supplied by the QS hereunder shall be in the form of three-phase 60 Hertz alternating current, at a nominal operating voltage of _____ ,000 volts (_____ kV) and power factor dispatchable and controllable in the range of 85% lagging to 85% leading as measured at the Delivery Point to maintain system operating parameters, as specified by FPL.

8.4.2 At all times during the term of this Contract, the QS shall operate and maintain the Facility: (~~i~~a) in such a manner as to ensure compliance with its obligations hereunder, in accordance with prudent engineering and operating practices and applicable law, and (~~ii~~b) with all system protective equipment in service whenever the Facility is connected to, or is operated in parallel with, FPL's system. The QS shall install at the Facility those system protection and control devices necessary to ensure safe and protected operation of all energized equipment during normal testing and repair. The QS shall have qualified personnel test and calibrate all protective equipment at regular intervals in accordance with good engineering and operating practices. A unit functional trip test shall be performed after each overhaul of the Facility's turbine, generator or boilers and the results shall be provided to FPL prior to returning the ~~equipment~~Facility to service. The specifics of the unit functional trip test will be consistent with good engineering and operating practices.

8.4.3 If the Facility is separated from the FPL system for any reason, under no circumstances shall the QS reconnect the Facility into FPL's system without first obtaining FPL's prior written approval.

8.4.4 During the term of this Contract, the QS shall employ qualified personnel for managing, operating and maintaining the Facility and for coordinating such with FPL. If the Facility has a Committed Capacity greater than 10 MW then, the QS shall ensure that operating personnel are on duty at all times, twenty-four (24) hours a calendar day and seven (7) calendar days a week. If the Facility has a Committed Capacity equal to or less than 10 MW then the QS shall ensure that operating personnel are on duty at least eight (8) hours per day from 8 AM EST to 5 PM EST from Monday to Friday, with an operator on call at all other hours.

8.4.5 FPL shall at all times be excused from its obligation to purchase and receive energy and capacity hereunder, and FPL shall have the ability to require the QS to curtail or reduce deliveries of energy, to the extent necessary (a) to maintain the reliability and integrity of any part of FPL's system, or(b) in the event that FPL determines that a failure to do so is likely to endanger life or property, or (c) is likely to result in significant disruption of electric service to FPL's customers. FPL shall give the QS prior notice, if practicable, of its intent to refuse, curtail or reduce FPL's acceptance of energy and firm capacity pursuant to this Section and will act to minimize the frequency and duration of such occurrences.

(Continued on Sheet No. 9.036)

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: ~~August 18, 2009~~

FLORIDA POWER & LIGHT COMPANY

~~First~~Second Revised Sheet No. 9.036
Cancels ~~Original~~First Sheet No. 9.036

(Continued from Sheet No. 9.035)

8.4.6 After providing notice to the QS, FPL shall not be required to purchase or receive energy from the QS during any period in which, due to operational circumstances, the purchase or receipt of such energy would result in FPL's incurring costs greater than those which it would incur if it did not make such purchases. An example of such an occurrence would be a period during which the load being served is such that the generating units on line are base load units operating at their minimum continuous ratings and the purchase of additional energy would require taking a base load unit off the line and replacing the remaining load served by that unit with peaking-type generation. FPL shall give the QS as much prior notice as practicable of its intent not to purchase or receive energy and firm capacity pursuant to this Section.

8.4.7 If the Facility has a Committed Capacity less than 75 MW, control, scheduling and dispatch of firm capacity and energy shall be the responsibility of the QS. If the Facility has a Committed Capacity greater than or equal to 75 MW, then control, scheduling and dispatch of firm capacity and energy shall be the responsibility of the QS, except during a "Dispatch Hour", i.e., any clock hour for which FPL requests the delivery of such capacity and energy. During any Dispatch Hour: i(a) control of the Facility will either be by Seller's manual control under the direction of FPL (whether orally or in writing) or by Automatic Generation Control by FPL's system control center as determined by FPL, and ii(b) FPL may request that the real power output be at any level up to the Committed Capacity of the Facility, provided, in no event shall FPL require the real power output of the Facility to be below the Facility's Minimum Load without decommitting the Facility. The Facility shall deliver the capacity and energy requested by FPL within _____ minutes, taking into account the operating limitations of the generating equipment as specified by the manufacturer, provided such time period specified herein is considered reasonable by prudent industry standards for the technology and equipment being utilized and assuming the Facility is operating at or above its Minimum Load. Start-up time from Cold Shutdown and Facility Turnaround time from Hot to Hot will be taken into consideration provided such are reasonable and consistent with ~~good~~prudent industry practices for the technology and equipment being utilized. The Facility's Operating Characteristics have been provided by the QS and are set forth in Appendix D, Section IV of Rate Schedule QS-2.

8.4.8 If the Facility has a Committed Capacity of less than 75 MW, FPL may require during certain periods, by oral, written, or electronic notification that the QS cause the Facility to reduce output to a level below the Committed Capacity but not lower than the Facility's Minimum Load. FPL shall provide as much notice as practicable, normally such notice will be of at least four (4) hours. The frequency of such request shall not exceed eighteen (18) times per calendar year and the duration of each request shall not exceed four (4) hours.

8.4.9 FPL's exercise of its rights under this Section 8 shall not give rise to any liability or payment obligation on the part of FPL, including any claim for breach of contract or for breach of any covenant of good faith and fair dealing.

9. **Completion/Performance Security**

9.1 As security for the achievement of the Guaranteed Capacity Delivery Date and satisfactory performance of its obligations hereunder, the QS shall provide FPL either: (a) an unconditional, irrevocable, standby letter of credit(s) with an expiration date no earlier than the end of the first (1st) anniversary of the Capacity Delivery Date (or the next business day thereafter), issued by a U.S. commercial bank or the U.S. branch of a foreign bank having a Credit Rating of A- or higher by S&P or A3 or higher by Moody's (a "Qualified Issuer"), in form and substance acceptable to FPL (including provisions (i) permitting partial and full draws and (ii) permitting FPL to draw in full if such letter of credit is not renewed or replaced as required by the terms hereof at least thirty (30) business days prior to its expiration date) ("Letter of Credit"); (b) a bond, issued by a financially sound Company acceptable to FPL and in a form and substance acceptable to FPL, ("Bond"); or (c) a cash collateral deposited with FPL ("Cash Collateral") (any of (a), (b), or (c), the "Completion/Performance Security"). ~~Such Letter of Credit, Bond or Cash Collateral~~Completion/Performance Security shall be provided in the amount and by the date listed below:

~~$30.00~~(a) $50.00 per ~~KW~~kW (for the number of ~~KW~~kW of Committed Capacity set forth in Section 5.1) to be delivered to FPL within ~~thirty~~five (~~30~~5) ~~calendar days of the execution of this Contract by the Parties hereto.~~ business days of the Effective Date; and

(b)$100.00 per kW (for the number of kW of Committed Capacity set forth in Section 5.1) to be delivered to FPL two years before the Guaranteed Capacity Delivery Date.

"Credit Rating" means with respect to any entity, on any date of determination, the respective ratings then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody's or other specified rating agency or agencies or if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its "corporate credit rating" by S&P.

"Moody's" means Moody's Investors Service, Inc. or its successor.

"S&P" means Standard & Poor's Ratings Group (a division of The McGraw-Hill Companies, Inc.) or its successor.

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: ~~August 18, 2009~~

FLORIDA POWER & LIGHT COMPANY

~~Sixth~~Seventh Revised Sheet No. 9.037
Cancels ~~Fifth~~Sixth Revised Sheet No. 9.037

(Continued from Sheet No. 9.036)

9.2 The specific security instrument provided for purposes of this Contract is:

( ) Letter of Credit.
( ) Bond.
( ) Cash Collateral.

9.3 FPL shall have the right to monitor (~~i~~a) the financial condition of the issuer of a Letter of Credit in the event any Letter of Credit is provided by the QS and (~~ii~~b) the insurer, in the case of any Bond. In the event the issuer of a Letter of Credit no longer qualifies as Qualified Issuer or the issuer of a Bond is no longer financially sound, FPL may require the QS to replace the Letter of Credit or the Bond, as applicable. ~~The~~Such replacement Letter of Credit or bond must be issued by a Qualified Issuer or a financially sound issuer, as applicable, within ~~thirty (30) calendar~~ten (10) business days following written notification to the QS of the requirement to replace. Failure by the QS to comply with the requirements of this Section 9.3 shall be grounds for FPL to draw in full on the existing Letter of Credit or bond and to exercise any other remedies it may have hereunder.

9.4 Notwithstanding the foregoing provisions of this Section 9, pursuant to FPSC Rule 25-17.091(4), F.A.C., a QS qualifying as a "Solid Waste Facility" pursuant to Section 377.709(3) or (5), F.S., respectively, may use an unsecured written commitment or promise to pay in a form reasonably acceptable to FPL, by the local government which owns the Facility or on whose behalf the QS operates the Facility, to secure its obligation to achieve on a timely basis the Capacity Delivery Date and the satisfactory performance of its obligations hereunder.

9.5 ~~If an Event of Default under Section 12 occurs, FPL shall be entitled immediately to receive, draw upon, or retain, as the case may be, one-hundred percent (100%) of the then applicable~~the Completion/Performance Security to satisfy any obligation or liability of QS arising pursuant to this Contract.

~~9.6~~9.5.1 If an Event of Default under Section 12 has not occurred and the QS fails to achieve the Capacity Delivery Date on or before the in-service date of the Avoided Unit or such later date as permitted by FPL pursuant to Section 5.6, FPL shall be entitled immediately to receive, draw upon, or retain, as the case may be, one-hundred (100%) of the Completion/ Performance Security as liquidated damages free from any claim or right of any nature whatsoever of the QS, including any equity or right of redemption by the QS. The Parties acknowledge that the injury that FPL will suffer as a result of delayed availability of Committed Capacity and energy is difficult to ascertain and that FPL may accept such sums as liquidated damages ~~or~~and resort to any other remedies which may be available to it under law or in equity. ~~If the Capacity Delivery Date occurs on or before the in-service date of the Avoided Unit or such later date as permitted by FPL pursuant to Section 5.6, then the QS shall be entitled to reduce the amount of the Completion/Performance Security to an amount equal to $15.00 per KW (for the number of KW of Committed Capacity set forth in Section 5.1).~~

~~9.7~~9.5.2 In the event that FPL requires the QS to perform one or more Committed Capacity Test(s) at any time on or before the first anniversary of the Capacity Delivery Date pursuant to Section 5.3 and, in connection with any such Committed Capacity Test(s), the QS fails to demonstrate a Capacity of at least one-hundred percent (100%) of the Committed Capacity set forth in Section 5.1, FPL shall be entitled immediately to receive, draw upon, or retain, as the case may be, one-hundred percent (100%) ~~of the then remaining amount~~ of the Completion/Performance Security as liquidated damages free from any claim or right of any nature whatsoever of the QS, including any equity or right of redemption by the QS. ~~In the event that FPL does not require the QS to perform a Committed Capacity Test or if the QS successfully demonstrates (in connection with all such Committed Capacity Tests required by FPL pursuant to Section 5.3) a Capacity of at least one-hundred percent (100%) of the Committed Capacity set forth in Section 5.1, in either case, on or before the first anniversary of the Capacity Delivery Date, then FPL shall return, as applicable, any remaining amount of~~QS shall promptly, but in no event more than five (5) business days following any draws on the Completion/Performance Security ~~within thirty (30) days of the first anniversary of the Capacity Delivery Date.~~, replenish the Completion/Performance Security to the amounts required herein.

~~9.8~~9.6 The QS, as the Pledgor of the Completion/Performance Security, hereby pledges to FPL, as the secured Party, as security for the achievement of the Capacity Delivery Date and satisfactory performance of its obligations hereunder, and grants to FPL a first priority continuing security interest in, lien on and right of set-off against all Completion/Performance Security transferred to or received by FPL hereunder. Upon the transfer or return by FPL to the QS of Completion/Performance Security, the security interest and lien granted hereunder on that Completion/Performance Security will be released immediately and, to the extent possible, without any further action by either party.

(Continued on Sheet No. 9.038)

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: ~~July 10, 2014~~

FLORIDA POWER & LIGHT COMPANY

First Revised Sheet No. 9.038
Cancels Original Sheet No. 9.038

(Continued from Sheet No. 9.037)

~~9.9~~9.7 In lieu of any interest, dividends or other amounts paid or deemed to have been paid with respect to Cash Collateral held by FPL (all of which may be retained by FPL), FPL will transfer to the QS on a monthly basis the Interest Amount, as calculated by FPL.

"Interest Amount" means, with respect to each monthly period, the aggregate sum of the amounts of interest calculated for each day in that monthly period on the principal amount of Cash Collateral held by FPL on that day, determined by FPL for each such day as follows:

(x) the amount of that Cash Collateral on that day; multiplied by

(y) the Interest Rate in effect for that day; divided by

(z) 360.

~~The~~"Interest Rate" ~~will be~~means: the Federal Funds Overnight rate as from time to time in effect.

"Federal Funds Overnight Rate" means, for the relevant determination date, the rate opposite the caption "Federal Funds (Effective)" as set forth for that day in the weekly statistical release designated as H.15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System. If on the determination date such rate is not yet published in H.15 (519), the rate for that date will be the rate set in Composite 3:30 P.M. Quotations for U.S. Government Securities for that day under the caption "Federal Funds/Effective Rate." If on the determination date such rate is not yet published in either H.15 (519) or Composite 3:30 P.M. Quotations for U.S. Government Securities, the rate for that date will be determined as if the Parties had specified "USD-Federal Funds-Reference Dealers" as the applicable rate.

10. Termination Fee

10.1 In the event that the QS receives capacity payments pursuant to Option B, Option C, Option D or Option E (as such options are defined in Appendix A and elected by the QS in Appendix E) or receives energy payments pursuant to the Fixed Firm Energy Payment Option (as such option is defined in Appendix A and elected by the QS in Appendix E) then, upon the termination of this Contract, the QS shall owe and be liable to FPL for a termination fee calculated in accordance with Appendix C (the "Termination Fee"). The QS's obligation to pay the Termination Fee shall survive the termination of this Contract. FPL shall provide the QS, on a monthly basis, a calculation of the Termination Fee.

10.1.1 The Termination Fee shall be secured (with the exception of governmental solid waste facilities covered by FPSC Rule 25-17.091 in which case the QS may use an unsecured written commitment or promise to pay, in a form reasonably acceptable to FPL, by the local government which owns the Facility or on whose behalf the QS operates the Facility, to secure its obligation to pay the Termination Fee) by the QS by: (~~i~~a) an unconditional, irrevocable, standby letter(s) of credit issued by Qualified Issuer in form and substance acceptable to FPL (including provisions (a) permitting partial and full draws and (b) permitting FPL to draw upon such letter of credit, in full, if such letter of credit is not renewed or replaced at least thirty (30) business days prior to its expiration date, ("Termination Fee Letter of Credit"); (~~ii~~b) a bond, issued by a financially sound Company and in a form and substance acceptable to FPL, ("Termination Fee Bond"); or (~~iii~~c) a cash collateral deposit with FPL ("Termination Fee Cash Collateral") (any of (~~i~~a), (~~ii~~b), or (~~iii~~c), the "Termination Security").

10.1.2 The specific security instrument selected by the QS for purposes of this Contract is:

( ) Termination Fee Letter of Credit
( ) Termination Fee Bond
( ) Termination Fee Cash Collateral

~~10.1.2~~10.1.3 FPL shall have the right to monitor the financial condition of (i) the issuer of a Termination Fee Letter of Credit in the case of any Termination Fee Letter of Credit and (ii) the insurer(s), in the case of any Termination Fee Bond. In the event the issuer of a Termination Fee Letter of Credit is no longer a Qualified Issuer or the issuer of a Termination Fee Bond is no longer financially sound, FPL may require the QS to replace the Termination Fee Letter of Credit or the Termination Fee Bond, as applicable. In the event that FPL notifies the QS that it requires such a replacement, the replacement Termination Fee Letter of Credit or Termination Fee Bond, as applicable, must be issued by a Qualified Issuer or financially sound company within ~~thirty (30) calendar~~ten (10) business days following such notification. Failure by the QS to comply with the requirements of this Section 10.1.2 shall be grounds for FPL to draw in full on any existing Termination Fee Letter of Credit or Termination Fee Bond and to exercise any other remedies it may have hereunder.

(Continued on Sheet No. 9.039)

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: ~~May 23, 2007~~

(Continued from Sheet No. 9.038)

~~10.1.3~~10.1.4 After the close of each calendar quarter (March 31, June 30, September 30, and December 31) occurring subsequent to the Capacity Delivery Date, the QS shall provide to FPL within ten (10) business days of the close of such calendar quarter with written assurance and documentation (the "Security Documentation"), in form and substance acceptable to FPL, that the amount of the most recently provided Termination Security is sufficient to cover the balance of the Termination Fee. In addition to the foregoing, at any time during the term of this Contract, FPL shall have the right to request, and the QS shall be obligated to deliver within five (5) business days of such request, such Security Documentation. Failure by the QS to comply with the requirements of this Section 10.1.3 shall be grounds for FPL to draw in full on any existing Termination Fee Letter of Credit or Termination Fee Bond or to retain any Termination Fee Cash Collateral, and to exercise any other remedies it may have hereunder to be applied against any Termination Fee that may be due and owing to FPL or that may in the future be due and owing to FPL.

~~10.1.4~~10.1.5 Upon any termination of this Contract following the Capacity Delivery Date, FPL shall be entitled to receive (and in the case of the Termination Fee Letter of Credit or Termination Fee Bond, draw upon such Termination Fee Letter of Credit or Termination Fee Bond) and retain one- hundred percent (100%) of the Termination Security to be applied against any Termination Fee that may be due and owing to FPL or that may in the future be due and owing to FPL. FPL will transfer to the QS any proceeds and Termination Security remaining after liquidation, set-off and/or application under this Article after satisfaction in full of all amounts payable by the QS with respect to any Termination Fee or other obligations due to FPL; the QS in all events will remain liable for any amounts remaining unpaid after any liquidation, set-off and/or application under this Article.

10.2 The QS, as the Pledgor of the Termination Security, hereby pledges to FPL, as the secured Party, as security for the Termination Fee, and grants to FPL a first priority continuing security interest in, lien on and right of set-off against all Termination Security transferred to or received by FPL hereunder. Upon the transfer or return by FPL to the QS of Termination Security, the security interest and lien granted hereunder on that Termination Security will be released immediately and, to the extent possible, without any further action by either party.

10.3 In lieu of any interest, dividends or other amounts paid or deemed to have been paid with respect to Termination Fee Cash Collateral held by FPL (all of which may be retained by FPL), FPL will transfer to the QS on a monthly basis the Interest Amount, as ~~calculated by FPL~~pursuant to Section 9.7.

~~"Interest Amount" means, with respect to each monthly period, the aggregate sum of the amounts of interest calculated for each day in that monthly period on the principal amount of Cash Collateral held by FPL on that day, determined by FPL for each such day as follows:~~

~~(x) the amount of that Termination Fee Cash Collateral on that day; multiplied by~~

~~(y) the Interest Rate in effect for that day; divided by~~

~~(z) 360.~~

~~The "Interest Rate" will be the Federal Funds Overnight rate as from time to time in effect.~~

~~"Federal Funds Overnight Rate" means, for the relevant determination date, the rate opposite the caption "Federal Funds (Effective)" as set forth for that day in the weekly statistical release designated as H.15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System. If on the determination date such rate is not yet published in H.15 (519), the rate for that date will be the rate set in Composite 3:30 P.M. Quotations for U.S. Government Securities for that day under the caption "Federal Funds/Effective Rate." If on the determination date such rate is not yet published in either H.15 (519) or Composite 3:30 P.M. Quotations for U.S. Government Securities, the rate for that date will be determined as if the Parties had specified "USD-Federal Funds-Reference Dealers" as the applicable rate.~~

11. Performance Factor

FPL desires to provide an incentive to the QS to operate the Facility during on-peak and off-peak periods in a manner which approximates the projected performance of FPL's Avoided Unit. A formula to achieve this objective is attached as Appendix B.

(Continued on Sheet No. 9.040)

FLORIDA POWER & LIGHT COMPANY

~~Third~~Fourth Revised Sheet No. 9.040
Cancels ~~Second~~Third Revised Sheet No. 9.040

(Continued from Sheet No. 9.039)

12. Default

Notwithstanding the occurrence of any Force Majeure as described in Section 16, each of the following shall constitute an Event of Default:

12.1 The QS fails to meet the applicable requirements specified in Section 1 of this Contract~~;~~.

12.2 The QS changes or modifies the Facility from that provided in Section 1 with respect to its type, location, technology or fuel source, without prior written approval from FPL~~;~~.

12.3 After the Capacity Delivery Date, the Facility fails, for twelve (12) consecutive months, to maintain an Annual Capacity Billing Factor, as described in Appendix B, of at least 70%~~;~~.

12.4 The QS fails to comply with any of the provisions of Section 9.0 hereof~~;~~ (Completion/Performance Security).

12.5 The QS fails to comply with any of the provisions of Section 10.0 hereof~~;~~ (Termination Security).

12.6 The QS ceases the conduct of active business; or if proceedings under the federal bankruptcy law or insolvency laws shall be instituted by or for or against the QS or if a receiver shall be appointed for the QS or any of its assets or properties; or if any part of the QS's assets shall be attached, levied upon, encumbered, pledged, seized or taken under any judicial process, and such proceedings shall not be vacated or fully stayed within 30 days thereof; or if the QS shall make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts as they become due~~;~~.

12.7 The QS fails to give proper assurance acceptable to FPL of adequate performance as specified under this Contract within 30 days after FPL, with reasonable grounds for insecurity, has requested in writing such assurances~~;~~.

12.8 The QS materially fails to perform as specified under this Contract, including, but not limited to, the QS's obligations under any part of Sections 8, ~~9, 10,~~ and ~~14-18;~~18.

12.9 The QS fails to achieve the permitting, licensing, certification, and all federal, state and local governmental environmental and licensing approvals required to initiate construction of the Facility by no later than one year prior to ~~the in-service date of the Avoided Unit;~~ Guaranteed Capacity Date.

12.10 The QS fails to comply with any of the provisions of Section 18.3 hereof (Project Management ~~hereof~~).

12.11 Any of the representations or warranties made by the QS in this Contract is false or misleading in any material respect ~~as of the time made~~;.

12.12 The occurrence of an event of default by the QS under the Interconnection Agreement or any applicable Wheeling Agreement~~;~~.

12.13 The QS fails to satisfy its obligations under Section ~~18.17 of this Contract;~~18.14 hereof (Assignment).

12.14 The QS fails to deliver to FPL, in accordance with this Contract any energy or firm capacity required to be delivered hereunder or the delivery or sale of any such energy and firm capacity to an entity other than FPL.

12.15 The QS fails to perform any material covenant or obligation under this Contract not specifically mentioned in this Section ~~12; or~~ 12.

~~12.15~~12.16 If at any time after the Capacity Delivery Date, the QS reduces the Committed Capacity due to an event of Force Majeure and fails to repair the Facility and reset the Committed Capacity to the level set forth in Section 5.1 (as such level may be reduced by Section 5.3) within twelve (12) months following the occurrence of such event of Force Majeure.

(Continued on Sheet No. 9.041)

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: ~~June 25, 2013~~

(Continued from Sheet No. 9.040)

13. FPL's Rights in the Event of Default

13.1 Upon the occurrence of any of the Events of Default in Section 12, FPL may:

(a) terminate this Contract, without penalty or further obligation, except as set forth in Section 13.2, by written notice to the QS, and offset against any payment(s) due from FPL to the QS, any monies otherwise due from the QS to FPL;

(b) draw on the Completion/Performance Security pursuant to Section 9 or collect the Termination Fee pursuant to Section 10 as applicable; and

(c) exercise any other remedy(ies) which may be available to FPL at law or in equity.

13.2 In the case of an Event of Default, the QS recognizes that any remedy at law may be inadequate because this Contract is unique and/or because the actual damages of FPL may be difficult to reasonably ascertain. Therefore, the QS agrees that FPL shall be entitled to pursue an action for specific performance, and the QS waives all of its rights to assert as a defense to such action that FPL's remedy at law is adequate.

13.3 Termination shall not affect the liability of either party for obligations arising prior to such termination or for damages, if any, resulting from any breach of this Contract.

14. Indemnification/Limits

14.1 FPL and the QS shall each be responsible for its own facilities. FPL and the QS shall each be responsible for ensuring adequate safeguards for other FPL customers, FPL's and the QS's personnel and equipment, and for the protection of its own generating system. Subject to section 2.7 Indemnity to Company, or section 2.71 Indemnity to Company – Governmental, FPL's General Rules and Regulations of Tariff Sheet No.6.020 each party (the "Indemnifying Party") agrees, to the extent permitted by applicable law, to indemnify, pay, defend, and hold harmless the other party (the "Indemnifying Party") and its officers, directors, employees, agents and contractors (hereinafter called respectively, "FPL Entities" and "QS Entities") from and against any and all claims, demands, costs, or expenses for loss, damage, or injury to persons or property of the Indemnified Party (or to third parties) caused by, arising out of, or resulting from: (a) a breach by the Indemnifying Party of its covenants, representations, and warranties or obligations hereunder; (b) any act or omission by the Indemnifying Party or its contractors, agents, servants or employees in connection with the installation or operation of its generation system or the operation thereof in connection with the other Party's system; (c) any defect in, failure of, or fault related to, the Indemnifying Party's generation system; (d) the negligence or willful misconduct of the Indemnifying Party or its contractors, agents, servants or employees; or (e) any other event, act or incident, including the transmission and use of electricity, that is the result of, or proximately caused by, the Indemnifying Party or its contractors, agents, servants or employees.

14.2 Payment by an Indemnified Party will not be a condition precedent to the obligations of the Indemnifying Party under Section 14. No Indemnified Party under Section 14 shall settle any claim for which it claims indemnification hereunder without first allowing the Indemnifying Party the right to defend such a claim. The Indemnifying Party shall have no obligations under Section 14 in the event of a breach of the foregoing sentence by the Indemnified Party. Section 14 shall survive termination of this Agreement.

14.3 Limitation on Consequential, Incidental and Indirect Damages. TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER THE QS NOR FPL, NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, FOR CLAIMS, SUITS, ACTIONS OR CAUSES OF ACTION FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS CONTRACT, OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH OR RELATED TO THIS CONTRACT, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, UNDER ANY INDEMNITY PROVISION OR ANY OTHER THEORY OF RECOVERY. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY, AND SUCH DIRECT DAMAGES SHALL BE THE SOLE AND EXCLUSIVE MEASURE OF DAMAGES AND

(Continued on Sheet No. 9.042)

~~First~~ Second Revised Sheet No.9.042
FLORIDA POWER & LIGHT COMPANY
Cancels ~~First~~ Sheet No. 9.042

(Continued from Sheet No. 9.041)

ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED; PROVIDED, HOWEVER, THE PARTIES AGREE THAT THE FOREGOING LIMITATIONS WILL NOT IN ANY WAY LIMIT LIABILITY OR DAMAGES UNDER ANY THIRD PARTY CLAIMS OR THE LIABILITY OF A PARTY WHOSE ACTIONS GIVING RISE TO SUCH LIABILITY CONSTITUTE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE PROVISIONS OF THIS SECTION SHALL APPLY REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS CONTRACT. NOTHING CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WAIVER OF A PARTY'S RIGHT TO SEEK INJUNCTIVE RELIEF.

15. Insurance

15.1 The QS shall procure or cause to be procured, and shall maintain throughout the entire term of this Contract, a policy or policies of liability insurance issued by an insurer acceptable to FPL on a standard "Insurance Services Office" commercial general liability form (such policy or policies, collectively, the "QS Insurance"). A certificate of insurance shall be delivered to FPL at least fifteen (15) calendar days prior to the start of any interconnection work. At a minimum, the QS Insurance shall contain (a) an endorsement providing coverage, including products liability/completed operations coverage for the term of this Contract, and (b) a broad form contractual liability endorsement covering liabilities (i) which might arise under, or in the performance or nonperformance of, this Contract and the Interconnection Agreement, or (ii) caused by operation of the Facility or any of the QS's equipment or by the QS's failure to maintain the Facility or the QS's equipment in satisfactory and safe operating condition. Effective at least fifteen (15) calendar days prior to the synchronization of the Facility with FPL's system, the QS Insurance shall be amended to include coverage for interruption or curtailment of power supply in accordance with industry standards. Without limiting the foregoing, the QS Insurance must be reasonably acceptable to FPL. Any premium assessment or deductible shall be for the account of the QS and not FPL.

15.2 The QS Insurance shall have a minimum limit of one million dollars ($1,000,000) per occurrence, combined single limit, for bodily injury (including death) or property damage.

15.3 In the event that such insurance becomes totally unavailable or procurement thereof becomes commercially impracticable, such unavailability shall not constitute an Event of Default under this Contract, but FPL and the QS shall enter into negotiations to develop substitute protection which the Parties in their reasonable judgment deem adequate.

15.4 To the extent that the QS Insurance is on a "claims made" basis, the retroactive date of the policy(ies) shall be the effective date of this Contract or such other date as may be agreed upon to protect the interests of the FPL Entities and the QS Entities. Furthermore, to the extent the QS Insurance is on a "claims made" basis, the QS's duty to provide insurance coverage shall survive the termination of this Contract until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort. To the extent the QS Insurance is on an "occurrence" basis, such insurance shall be maintained in effect at all times by the QS during the term of this Contract.

15.5 The QS Insurance shall provide that it may not be cancelled or materially altered without at least thirty (30) calendar days' written notice to FPL. The QS shall provide FPL with a copy of any material communication or notice related to the QS Insurance within ten (10) business days of the QS's receipt or issuance thereof.

15.6 The QS shall be designated as the named insured and FPL shall be designated as an additional named insured under the QS Insurance. The QS Insurance shall be endorsed to be primary to any coverage maintained by FPL.

16. Force Majeure

Force Majeure is defined as an event or circumstance that is not within the reasonable control of, or the result of the negligence of, the affected party, and which, by the exercise of due diligence, the affected party is unable to overcome, avoid, or cause to be avoided in a commercially reasonable manner. Such events or circumstances may include, but are not limited to, acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, explosions and fires not originating in the Facility or caused by its operation, hurricanes, floods, strikes, lockouts or other labor disputes, difficulties (not caused by the failure of the affected party to comply with the terms of a collective bargaining agreement), or actions or restraints by court order or governmental authority or arbitration award. Force Majeure shall not include (~~i~~a) the QS's ability to sell capacity and energy to another market at a more advantageous price; (~~ii~~b) equipment breakdown or inability to use equipment caused by its design, construction, operation, maintenance or inability to meet regulatory standards, or otherwise caused by an event originating in the Facility; (~~iii~~c)) a failure of performance of any other entity, including any entity providing electric transmission service to the QS, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event; (~~iv~~d) failure of the QS to timely apply for or obtain permits.

(Continued on Sheet No. 9.043)

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: ~~June 25, 2013~~

(Continued from Sheet No. 9.042)

16.1 Except as otherwise provided in this Contract, each party shall be excused from performance when its nonperformance was caused, directly or indirectly by an event of Force Majeure.

16.2 In the event of any delay or nonperformance resulting from an event of Force Majeure, the party claiming Force Majeure shall notify the other party in writing within two (2) business days of the occurrence of the event of Force Majeure, of the nature, cause, date of commencement thereof and the anticipated extent of such delay, and shall indicate whether any deadlines or date(s), imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than the cure for the Force Majeure requires. A party claiming Force Majeure shall not be entitled to any relief therefore unless and until conforming notice is provided. The party claiming Force Majeure shall notify the other party of the cessation of the event of Force Majeure or of the conclusion of the affected party's cure for the event of Force Majeure, in either case within two (2) business days thereof.

16.3 The party claiming Force Majeure shall use its best efforts to cure the cause(s) preventing its performance of this Contract; provided, however, the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected party, and such party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such party deems to be unfavorable.

16.4 If the QS suffers an occurrence of an event of Force Majeure that reduces the generating capability of the Facility below the Committed Capacity, the QS may, upon notice to FPL, temporarily adjust the Committed Capacity as provided in Sections 16.5 and 16.6. Such adjustment shall be effective the first calendar day immediately following FPL's receipt of the notice or such later date as may be specified by the QS. Furthermore, such adjustment shall be the minimum amount necessitated by the event of Force Majeure.

16.5 If the Facility is rendered completely inoperative as a result of Force Majeure, the QS shall temporarily set the Committed Capacity equal to 0 KW until such time as the Facility can partially or fully operate at the Committed Capacity that existed prior to the Force Majeure. If the Committed Capacity is 0 KW, FPL shall have no obligation to make capacity payments hereunder.

16.6 If, at any time during the occurrence of an event of Force Majeure or during its cure, the Facility can partially or fully operate, then the QS shall temporarily set the Committed Capacity at the maximum capability that the Facility can reasonably be expected to operate.

16.7 Upon the cessation of the event of Force Majeure or the conclusion of the cure for the event of Force Majeure, the Committed Capacity shall be restored to the Committed Capacity that existed immediately prior to the Force Majeure. Notwithstanding any other provision of this Contract, upon such cessation or cure, FPL shall have the right to require a Committed Capacity Test to demonstrate the Facility's compliance with the requirements of this section 16.7. Any Committed Capacity Test required by FPL under this Section shall be additional to any Committed Capacity Test under Section 5.3.

16.8 During the occurrence of an event of Force Majeure and a reduction in Committed Capacity under Section 16.4, all Monthly Capacity Payments shall reflect, pro rata, the reduction in Committed Capacity, and the Monthly Capacity Payments will continue to be calculated in accordance with the pay-for-performance provisions in Appendix B.

16.9 The QS agrees to be responsible for and pay the costs necessary to reactivate the Facility and/or the interconnection with FPL's system if the same is (are) rendered inoperable due to actions of the QS, its agents, or Force Majeure events affecting the QS, the Facility or the interconnection with FPL. FPL agrees to reactivate, at its own cost, the interconnection with the Facility in circumstances where any interruptions to such interconnections are caused by FPL or its agents.

17. Representations, Warranties, and Covenants of QS

The QS represents and warrants that as of the Effective Date and for the term of this Contract:

17.1 Organization, Standing and Qualification

The QS is a _____ (corporation, partnership, or other, as applicable) duly organized and validly existing in good standing under the laws of _____ and has all necessary power and authority to carry on its business as presently conducted, to own or hold under lease its properties and to enter into and perform its obligations under this Contract and all other related documents and agreements to which it is or shall be a Party. The QS is duly qualified or licensed to do business in the State of Florida and in all other jurisdictions wherein the nature of its business and operations or the character of the properties owned or leased by it makes such qualification or licensing necessary and where the failure to be so qualified or licensed would impair its ability to perform its obligations under this Contract or would result in a material liability to or would have a material adverse effect on FPL.

(Continued on Sheet No. 9.044)

(Continued from Sheet No. 9.043)

17.2 Due Authorization, No Approvals, No Defaults, etc.

Each of the execution, delivery and performance by the QS of this Contract has been duly authorized by all necessary action on the part of the QS, does not require any approval, except as has been heretofore obtained, of the _____ (shareholders, partners, or others, as applicable) of the QS or any consent of or approval from any trustee, lessor or holder of any indebtedness or other obligation of the QS, except for such as have been duly obtained, and does not contravene or constitute a default under any law, the _____ (articles of incorporation, bylaws, or other as applicable) of the QS, or any agreement, judgment, injunction, order, decree or other instrument binding upon the QS, or subject the Facility or any component part thereof to any lien other than as contemplated or permitted by this Contract. This Contract constitutes QS's legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, except as such enforceability may be limited by applicable bankruptcy laws from time to time in effect that affect creditors' rights generally or by general principles of equity (regardless of whether such enforcement is considered in equity or at law).

17.3 Compliance with Laws

The QS has knowledge of all laws and business practices that must be followed in performing its obligations under this Contract. The QS is in compliance with all laws, except to the extent that failure to comply therewith would not, in the aggregate, have a material adverse effect on the QS or FPL.

17.4 Governmental Approvals

Except as expressly contemplated herein, neither the execution and delivery by the QS of this Contract, nor the consummation by the QS of any of the transactions contemplated thereby, requires the consent or approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action in respect of governmental authority, except in respect of permits (a) which have already been obtained and are in full force and effect or (b) are not yet required (and with respect to which the QS has no reason to believe that the same will not be readily obtainable in the ordinary course of business upon due application therefore).

17.5 No Suits, Proceedings

There are no actions, suits, proceedings or investigations pending or, to the knowledge of the QS, threatened against it at law or in equity before any court or tribunal of the United States or any other jurisdiction which individually or in the aggregate could result in any materially adverse effect on the QS's business, properties, or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations under this Contract. The QS has no knowledge of a violation or default with respect to any law which could result in any such materially adverse effect or impairment. The QS is not in breach of, in default under, or in violation of, any applicable Law, or the provisions of any authorization, or in breach of, in default under, or in violation of, or in conflict with any provision of any promissory note, indenture or any evidence of indebtedness or security therefore, lease, contract, or other agreement by which it is bound, except for any such breaches, defaults, violations or conflicts which, individually or in the aggregate, could not reasonably be expected to have a material adverse effect on the business or financial condition of Buyer or its ability to perform its obligations hereunder.

17.6 Environmental Matters

17.6.1 QS Representations

To the best of its knowledge after diligent inquiry, the QS knows of no (a) existing violations of any environmental laws at the Facility, including those governing hazardous materials or (b) pending, ongoing, or unresolved administrative or enforcement investigations, compliance orders, claims, demands, actions, or other litigation brought by governmental authorities or other third parties alleging violations of any environmental law or permit which would materially and adversely affect the operation of the Facility as contemplated by this Contract.

17.6.2 Ownership and Offering For Sale Of Renewable Energy Attributes

The QS retains any and all rights to own and to sell any and all environmental attributes associated with the electric generation of the Facility, including but not limited to, any and all renewable energy certificates, "green tags" or other tradable environmental interests (collectively "RECs"), of any description.

(Continued on Sheet No. 9.045)

FLORIDA POWER & LIGHT COMPANY

~~Second~~Third Revised Sheet No. 9.045
Cancels ~~First~~Second Revised Sheet No. 9.045

(Continued from Sheet No. 9.044)

17.6.3 Changes in Environmental and Governmental Regulations

If new environmental and other regulatory requirements enacted during the term of the Contract change FPL's full avoided cost of the unit on which the Contract is based, either party can elect to have the contract reopened.

17.7 Interconnection/Wheeling Agreement

The QS has executed an interconnection agreement with FPL, or represents or warrants that it has entered into a valid and enforceable Interconnection Agreement with the utility in whose service territory the Facility is located, pursuant to which the QS assumes contractual responsibility to make any and all transmission-related arrangements (including control area services) between the QS and the transmitting utility for delivery of the Facility's capacity and energy to FPL.

17.8 Technology and Generator Capabilities

That for the term of this Contract the Technology and Generator Capabilities table set forth in Section 1 is accurate and complete.

18. General Provisions

18.1 Project Viability

To assist FPL in assessing the QS's financial and technical viability, the QS shall provide the information and documents requested in Appendix D or substantially similar documents, to the extent the documents apply to the type of Facility covered by this Contract, and to the extent the documents are available. All documents to be considered by FPL must be submitted at the time this Contract is presented to FPL. Failure to provide the following such documents may result in a determination of non-viability by FPL.

18.2 Permits; Site Control

The QS hereby agrees to obtain and maintain ~~any and all permits, certifications, licenses, consents or approvals of any governmental authority~~Permits which the QS is required to obtain as a prerequisite to engaging in the activities specified in this Contract. QS shall also obtain and maintain Site Control for the Term of the Contract.

18.3 Project Management

18.3.1 If requested by FPL, the QS shall submit to FPL its integrated project schedule for FPL's review within sixty calendar days from the execution of this Contract, and a start-up and test schedule for the Facility at least sixty calendar days prior to start-up and testing of the Facility. These schedules shall identify key licensing, permitting, construction and operating milestone dates and activities. If requested by FPL, the QS shall submit progress reports in a form satisfactory to FPL every calendar month until the Capacity Delivery Date and shall notify FPL of any changes in such schedules within ten calendar days after such changes are determined. FPL shall have the right to monitor the construction, start-up and testing of the Facility, either on-site or off-site. FPL's technical review and inspections of the Facility and resulting requests, if any, shall not be construed as endorsing the design thereof or as any warranty as to the safety, durability or reliability of the Facility.

18.3.2 The QS shall provide FPL with the final designer's/manufacturer's generator capability curves, protective relay types, proposed protective relay settings, main one-line diagrams, protective relay functional diagrams, and alternating current and direct current elementary diagrams for review and inspection at FPL no later than one hundred eighty calendar days prior to the initial synchronization date.

18.4 Assignment

This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns. This Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party, such consent to be granted or withheld in such other Party's sole discretion. Any direct or indirect change of control of QS (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of FPL. Notwithstanding the foregoing, either Party may, without the consent of the other Party, assign or transfer this Agreement: (ia) to any lender as collateral security for obligations under any financing documents entered into with such lender; ~~(ii~~ provided, QS shall be responsible for FPL's reasonable costs and expenses associated with the review, negotiation, execution and delivery of any documents or information pursuant to such collateral assignment, including reasonable attorneys' fees (b) to an affiliate of such Party; *provided,* that such affiliate's creditworthiness is equal to or better than that of such Party (and in no event less than Investment Grade) as determined reasonably by the non-assigning or non-transferring Party and; *provided, further,* that any such affiliate shall agree in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning or non-transferring Party arising or accruing hereunder from and after the date of such assumption. "Investment Grade" means BBB- or above from Standard & Poor's Corporation or Baa3~~2~~ or above from Moody's Investor Services.

18.5 Disclaimer

In executing this Contract, FPL does not, nor should it be construed, to extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with the QS or any assignee of this Contract.

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: ~~June 25, 2013~~

(Continued from Sheet No. 9.045)

18.6 Notification

All formal notices relating to this Contract shall be deemed duly given when delivered in person, or sent by registered or certified mail, or sent by fax if followed immediately with a copy sent by registered or certified mail, to the individuals designated below. The Parties designate the following individuals to be notified or to whom payment shall be sent until such time as either Party furnishes the other Party written instructions to contact another individual:

For the QS:

_____

_____

_____

_____

For FPL:

Florida Power & Light Company

700 Universe Boulevard
Juno Beach, FL 33408
Attn: EMT Contracts Department

This signed Contract and all related documents may be presented no earlier than 8:00 a.m. on the effective date of the Standard Offer Contract, as determined by the FPSC. Contracts and related documents may be mailed to the address below or delivered during normal business hours (8:00 a.m. to 4:45 p.m.) to the visitors' entrance at the address below:

Florida Power & Light Company
700 Universe Boulevard, Juno Beach, FL 33408
Attention: Contracts Manager/Coordinator
EMT Contracts Department

18.7 Applicable Law

This Contract shall be construed in accordance with and governed by, and the rights of the Parties shall be construed in accordance with, the laws of the State of Florida as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies, without regard to conflict of law rules thereof.

18.8 Venue

The Parties hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of Florida or, in the event that jurisdiction for any matter cannot be established in the United States District Court for the Southern District of Florida, in the state court for Palm Beach County, Florida, solely in respect of the interpretation and enforcement of the provisions of this Contract and of the documents referred to in this Contract, and in respect of the transactions contemplated hereby, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or of any such document, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Contract or any such document may not be enforced in or by such courts, and the Parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a court. The Parties hereby consent to and grant any such court jurisdiction over the persons of such Parties solely for such purpose and over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 18.8 hereof or in such other manner as may be permitted by Law shall be valid and sufficient service thereof.

(Continued on Sheet No. 9.047)

(Continued from Sheet No. 9.046)

18.9. Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS CONTRACT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT A PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION RESULTING FROM, ARISING OUT OF OR RELATING TO THIS CONTRACT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (~~i~~a) NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (~~ii~~b) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (~~iii~~c) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (~~iv~~d) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS CONTRACT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 18.9

18.10 Taxation

In the event that FPL becomes liable for additional taxes, including interest and/or penalties arising from an Internal Revenue ~~Services~~Service's determination, through audit, ruling or other authority, that FPL's payments to the QS for capacity under Options B, C, D, E or for energy pursuant to the Fixed Firm Energy Payment Option D are not fully deductible when paid (additional tax liability), FPL may bill the QS monthly for the costs, including carrying charges, interest and/or penalties, associated with the fact that all or a portion of these capacity payments are not currently deductible for federal and/or state income tax purposes. FPL, at its option, may offset these costs against amounts due the QS hereunder. These costs would be calculated so as to place FPL in the same economic position in which it would have been if the entire capacity payments had been deductible in the period in which the payments were made. If FPL decides to appeal the Internal Revenue Service's determination, the decision as to whether the appeal should be made through the administrative or judicial process or both, and all subsequent decisions pertaining to the appeal (both substantive and procedural), shall rest exclusively with FPL.

18.11 Severability

If any part of this Contract, for any reason, is declared invalid, or unenforceable by a public authority of appropriate jurisdiction, then such decision shall not affect the validity of the remainder of the Contract, which remainder shall remain in force and effect as if this Contract had been executed without the invalid or unenforceable portion.

18.12 Complete Agreement and Amendments

All previous communications or agreements between the Parties, whether verbal or written, with reference to the subject matter of this Contract are hereby abrogated. No amendment or modification to this Contract shall be binding unless it shall be set forth in writing and duly executed by both Parties. This Contract constitutes the entire agreement between the Parties.

18.13 Survival of Contract

This Contract, as it may be amended from time to time, shall be binding upon, and inure to the benefit of, the Parties' respective successors-in-interest and legal representatives.

18.14 Record Retention

The QS agrees to retain for a period of five (5) years from the date of termination hereof all records relating to the performance of its obligations hereunder, and to cause all QS Entities to retain for the same period all such records.

18.15 No Waiver

No waiver of any of the terms and conditions of this Contract shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance.

(Continued on Sheet No. 9.048)

(Continued from Sheet No. 9.047)

18.16 Set-Off

FPL may at any time, but shall be under no obligation to, set off any and all sums due from the QS against sums due to the QS hereunder.

18.17 Assistance With FPL's evaluation of FIN 46R

Accounting rules set forth in Financial Accounting Standards Board Interpretation No. 46 (Revised December 2003) ("FIN 46R"), as well as future amendments and interpretations of those rules, may require FPL to evaluate whether the QS must be consolidated, as a variable interest entity (as defined in FIN 46R), in the consolidated financial statements of FPL. The QS agrees to fully cooperate with FPL and make available to FPL all financial data and other information, as deemed necessary by FPL, to perform that evaluation on a timely basis at inception of the PPA and periodically as required by FIN 46R. If the result of an evaluation under FIN 46R indicates that the QS must be consolidated in the financial statements of FPL, the QS agrees to provide financial statements, together with other required information, as determined by FPL, for inclusion in disclosures contained in the footnotes to the financial statements and in FPL's required filings with the Securities and Exchange Commission ("SEC"). The QS shall provide this information to FPL in a timeframe consistent with FPL's earnings release and SEC filing schedules, to be determined at FPL's discretion. The QS also agrees to fully cooperate with FPL and FPL's independent auditors in completing an assessment of the QS's internal controls as required by the Sarbanes-Oxley Act of 2002 and in performing any audit procedures necessary for the independent auditors to issue their opinion on the consolidated financial statements of FPL. FPL will treat any information provided by the QS in satisfying Section 18.17 as confidential information and shall only disclose such information to the extent required by accounting and SEC rules and any applicable laws.

IN WITNESS WHEREOF, the QS and FPL executed this Contract this _____ day of _____.

WITNESS: FLORIDA POWER & LIGHT COMPANY

_____

_____

Date _____

WITNESS: _____ (QS)

_____

_____

Date _____

RATE SCHEDULE QS-2
APPENDIX A
TO THE STANDARD OFFER CONTRACT
STANDARD RATE FOR PURCHASE OF FIRM CAPACITY AND ENERGY
FROM A RENEWABLE ENERGY FACILITY
OR A QUALIFYING FACILITY WITH A DESIGN CAPACITY OF 100 KW OR LESS

SCHEDULE
QS-2, Firm Capacity and Energy

AVAILABLE
The Company will, under the provisions of this Schedule and the Company's "Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Renewable Energy Facility or a Qualifying Facility with a design capacity of 100 KW or less" ("Standard Offer Contract"), purchase firm capacity and energy offered by a Renewable Energy Facility specified in Section 366.91, Florida Statutes or by a Qualifying Facility with a design capacity of 100 KW or less as specified in FPSC Rule 25-17-0832(4) and which is either directly or indirectly interconnected with the Company. Both of these types of facilities shall also be referred to herein as Qualified Seller or "QS".

The Company will petition the FPSC for closure upon any of the following as related to the generating unit upon which this standard offer contract is based i.e. the Avoided Unit : (a) a request for proposals (RFP) pursuant to Rule 25-22.082, F.A.C., is issued, (b) the Company files a petition for a need determination or commences construction of the Avoided Unit when the generating unit is not subject to Rule 25-22.082, F.A.C., or (c) the generating unit upon which the standard offer contract is based is no longer part of the utility's generation plan, as evidenced by a petition to that effect filed with the Commission or by the utility's most recent Ten Year Site Plan.

APPLICABLE
To Renewable Energy Facilities as specified in Section 366.91, Florida Statutes producing capacity and energy from qualified renewable resources for sale to the Company on a firm basis pursuant to the terms and conditions of this schedule and the Company's "Standard Offer Contract". Firm Renewable Capacity and Renewable Energy are capacity and energy produced and sold by a QS pursuant to the Standard Offer Contract provisions addressing (among other things) quantity, time and reliability of delivery.

To Qualifying Facilities ("QF"), with a design capacity of 100 KW or less, as specified in FPSC Rule 25-17.0832(4)(a) producing capacity and energy for sale to the Company on a firm basis pursuant to the terms and conditions of this schedule and the Company's "Standard Offer Contract", Firm Capacity and Energy are described by FPSC Rule 25-17.0832, F.A.C., and are capacity and energy produced and sold by a QF pursuant to the Standard Offer Contract provisions addressing (among other things) quantity, time and reliability of delivery.

CHARACTER OF SERVICE
Purchases within the territory served by the Company shall be, at the option of the Company, single or three phase, 60 hertz alternating current at any available standard Company voltage. Purchases from outside the territory served by the Company shall be three phase, 60 hertz alternating current at the voltage level available at the interchange point between the Company and the entity delivering the Firm Energy and Capacity from the QS.

LIMITATION
Purchases under this schedule are subject to Section 366.91, Florida Statutes and/or FPSC Rules 25-17.0832 through 25-17.091, F.A.C., and 25-17.200 through 25-17.310 F.A.C and are limited to those Facilities which:

A. Commit to commence deliveries of firm capacity and energy no later than the in-service date of the Avoided Unit, as detailed in Appendix II, and to continue such deliveries for a period of at least 10 years up to a maximum of the life of the avoided unit;

B. Are not currently under contract with the Company or with any other entity for the Facility's output for the period specified above

(Continued on Sheet No. 10.301)

FLORIDA POWER & LIGHT COMPANY

Seventh Revised Sheet No. 10.301
Cancels Sixth Revised Sheet No. 10.301

(Continued from Sheet No. 10.300)

RATES FOR PURCHASES BY THE COMPANY

Firm Capacity and Energy are purchased at a unit cost, in dollars per kilowatt per month and cents per kilowatt-hour, respectively, based on the capacity required by the Company. For the purpose of this Schedule, an Avoided Unit has been designated by the Company, and is detailed in Appendix II to this Schedule. Appendix I to this Schedule describes the methodology used to calculate payment schedules, applicable to the Company's Standard Offer Contract filed and approved pursuant to Section 366.91, Florida Statutes and to FPSC Rules 25-17.082 through 25-17.091, F.A.C and 25-17.200 through 25-17.310, F.A.C.

A. Firm Capacity Rates

Options A through E are available for payment of firm capacity which is produced by a QS and delivered to the Company. Once selected, an option shall remain in effect for the term of the Standard Offer Contract with the Company. A payment schedule, for the normal payment option as shown below, contains the monthly rate per kilowatt of Firm Capacity which the QS has contractually committed to deliver to the Company and is based on a contract term which extends ten (10) years beyond the in-service date of the Avoided Unit. Payment schedules for other contract terms, as specified in Appendix E, will be made available to any QS upon request and may be calculated based upon the methodologies described in Appendix I. The currently approved parameters used to calculate the schedule of payments are found in Appendix II to this Schedule.

Adjustment to Capacity Payment

The firm capacity rates will be adjusted to reflect the impact that the location of the QS will have on FPL system reliability due to constraints imposed on the operation of FPL transmission tie lines.

Appendix III shows, for illustration purposes, the factors that would be used to adjust the firm capacity rate for different geographical areas. The actual adjustment would be determined on a case-by-case basis. The amount of such adjustment, as well as a binding contract rate for firm capacity, shall be provided to the QS within sixty days of FPL execution of the signed Standard Offer Contract.

Option A - Fixed Value of Deferral Payments - Normal Capacity

Payment schedules under this option are based on the value of a single year purchase with an in-service date of the Avoided Unit, as described in Appendix I. Once this option is selected, the current schedule of payments shall remain fixed and in effect throughout the term of the Standard Offer Contract.

(Continued on Sheet No. 10.302)

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: June 25, 2013

(Continued from Sheet No. 10.301)

Option B - Fixed Value of Deferral Payments - Early Capacity

Payment schedules under this option are based upon the early capital cost component of the value of a year-by-year deferral of the Company's Avoided Unit provided; however, that under no circumstances may payments begin before the QS is delivering firm capacity and energy to the Company pursuant to the terms of the Standard Offer Contract. When this option is selected, the capacity payments shall be made monthly commencing no earlier than the Capacity Delivery Date of the QS and calculated using the methodology shown on Appendix I.

The QS shall select the month and year in which the deliveries of firm capacity and energy to the Company are to commence and capacity payments are to start. The Company will provide the QS with a schedule of capacity payment rates based on the month and year in which the deliveries of firm capacity and energy are to commence and the term of the Standard Offer Contract as specified in Appendix E.

Option C - Fixed Value of Deferral Payment - Levelized Capacity

Payment schedules under this option are based upon the levelized capital cost component of the value of a year-by-year deferral of the Company's Avoided Unit. The capital portion of capacity payments under this option shall consist of equal monthly payments over the term of the Standard Offer Contract, calculated as shown on Appendix I. The fixed operation and maintenance portion of the capacity payments shall be equal to the value of the year-by-year deferral of fixed operation and maintenance expense associated with the Company's Avoided Unit. The methodology used to calculate this option is shown in Appendix I. The Company will provide the QS with a schedule of capacity payment rates based on the month and year in which the deliveries of firm capacity and energy are to commence and the term of the Standard Offer Contract as specified in Appendix E.

Option D - Fixed Value of Deferral Payment - Early Levelized Capacity

Payment schedules under this option are based upon the early levelized capital cost component of the value of a year-by-year deferral of the Company's Avoided Unit. The capital portion of the capacity payments under this option shall consist of equal monthly payments over the term of the Standard Offer Contract, calculated as shown on Appendix I. The fixed operation and maintenance expense shall be calculated as shown in Appendix I. At the option of the QS, payments for early levelized capacity shall commence at any time before the anticipated in-service date of the Company's Avoided Unit as specified in Appendix E, provided that the QS is delivering firm capacity and energy to the Company pursuant to the terms of the Standard Offer Contract. The Company will provide the QS with a schedule of capacity payment rates based on the month and year in which the deliveries of firm capacity and energy are to commence and the term of the Standard Offer Contract as specified in Appendix E.

Option E – Flexible Payment Option

Payment schedules under this option are based upon a payment stream elected by the QS consisting of the capital component of the Company's avoided unit. Payments can commence at any time after the actual in-service date of the QS and before the anticipated in-service date of the utility's avoided unit, as specified in Appendix E, provided that the QS is delivering firm capacity and energy to the Company pursuant to the terms of the Standard Offer Contract. Regardless of the payment stream elected by the QS, the cumulative present value of capital cost payments made to the QS over the term of the contract shall not exceed the cumulative present value of the capital cost payments which would have been made to the QS had such payments been made pursuant to FPSC Rule 25-17.0832(4)(g)1, F.A.C. Fixed operation and maintenance expense shall be calculated in conformance with Rule 25-17.0832(6),F.A.C. The Company will provide the QS with a schedule of capacity payment rates based on the information specified in Appendix E.

(Continued on Sheet No. 10.303)

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(Continued from Sheet No. 10.302)

B. Energy Rates

(1) Payments Associated with As-Available Energy Costs prior to the In-Service Date of the Avoided Unit.

Options A or B are available for payment of energy which is produced by the QS and delivered to the Company prior to the in-service date of the Avoided Unit. The QS shall indicate its selection in Appendix E, Once selected; an option shall remain in effect for the term of the Standard Offer Contract with the Company.

Option A – Energy Payments based on Actual Energy Costs

The energy rate, in cents per kilowatt-hour (¢/KWh), shall be based on the Company's actual hourly avoided energy costs which are calculated by the Company in accordance with FPSC Rule 25-17.0825, F.A.C. Avoided energy costs include incremental fuel, identifiable operation and maintenance expenses, and an adjustment for line losses reflecting delivery voltage. The calculation of the Company's avoided energy costs reflects the delivery of energy from the region of the Company in which the Delivery Point of the QS is located. When economy transactions take place, the incremental costs are calculated as described in FPL's Rate Schedule COG-1.

The calculation of payments to the QS shall be based on the sum, over all hours of the billing period, of the product of each hour's avoided energy cost times the purchases of energy from the QS by the Company for that hour. All purchases of energy shall be adjusted for losses from the point of metering to the Delivery Point.

Option B – Energy Payments based on the year by year projection of As-Available energy costs

The energy rate, in cents per kilowatt-hour (¢/KWh), shall be based on the Company's year by year projection of system incremental fuel costs, prior to hourly economy sales to other utilities, based on normal weather and fuel market conditions (annual As-Available Energy Cost Projection which are calculated by the Company in accordance with FPSC Rule 25-17.0825, F.A.C. and with FPSC Rule 25-17.250(6) (a) F.A.C.) plus a fuel market volatility risk premium mutually agreed upon by the utility and the QS. Prior to the start of each applicable calendar year, the Company and the QS shall mutually agree on the fuel market volatility risk premium for the following calendar year, normally no later than November 15. The Company will provide its projection of the applicable annual As-Available Energy Cost prior to the start of the calendar year, normally no later than November 15 of each applicable calendar year. In addition to the applicable As-Available Energy Cost projection the energy payment will include identifiable operation and maintenance expenses, an adjustment for line losses reflecting delivery voltage and a factor that reflects in the calculation of the Company's Avoided Energy Costs the delivery of energy from the region of the Company in which the Delivery Point of the QS is located.

The calculation of payments to the QS shall be based on the sum, over all hours of the billing period, of the product of each hour's applicable Projected Avoided Energy Cost times the purchases of energy from the QS by the Company for that hour. All purchases of energy shall be adjusted for losses from the point of metering to the Delivery Point.

(2) Payments Associated with Applicable Avoided Energy Costs after the In-Service Date of the Avoided Unit.

Option C is available for payment of energy which is produced by the QS and delivered to the Company after the in-service date of the avoided unit. In addition, Option D is available to the QS which elects to fix a portion of the firm energy payment. The QS shall indicate its selection of Option D in Appendix E, once selected, Option D shall remain in effect for the term of the Standard Offer Contract.

Option C- Energy Payments based on Actual Energy Costs starting on the in-service date of the Avoided Unit, as detailed in Appendix II.

The calculation of payments to the QS for energy delivered to FPL on and after the in-service date of the Avoided Unit shall be the sum, over all hours of the Monthly Billing Period, of the product of (a) each hour's firm energy rate (¢/KWh); and (b) the amount of energy (KWH) delivered to FPL from the Facility during that hour.

(Continued on Sheet No. 10.304)

FLORIDA POWER & LIGHT COMPANY

~~Seventh~~Eighth Revised Sheet No. 10.304
Cancels ~~Sixth~~Seventh Revised Sheet No. 10.304

(Continued from Sheet No. 10.303)

For any Dispatch Hour the firm energy rate shall be, on an hour-by-hour basis, the Company's Avoided Unit Energy Cost. For any other period during which energy is delivered by the QS to FPL, the firm energy rate in cents per kilowatt hour (¢/KWh) shall be the following on an hour-by-hour basis: the lesser of (a) the as-available energy rate calculated by FPL in accordance with FPSC Rule 25-17.0825, FAC, and FPL's Rate Schedule COG-1, as they may each be amended from time to time and (b) the Company's Avoided Unit Energy Cost. The Company's Avoided Unit Energy Cost, in cents per kilowatt-hour (¢/KWh) shall be defined as the product of: (a) the fuel price in $/mmBTU as determined from gas prices published in Platts Inside FERC Gas Market Report, first of the month posting for Florida Gas Transmission Zone 3, plus all charges, surcharges and percentages that are in effect from time to time for service under Gulfstream Natural Gas System's Rate Schedule FTS; and (b) the average annual heat rate of the Avoided Unit, plus (c) an additional payment for variable operation and maintenance expenses which will be escalated based on the actual Producer Price Index. All energy purchases shall be adjusted for losses from the point of metering to the Delivery Point. The calculation of the Company's avoided energy cost reflects the delivery of energy from the geographical area of the Company in which the Delivery Point of the QS is located.

Option D- Fixed Firm Energy Payments Starting as early as the In-Service Date of the QS Facility

The calculation of payments to the QS for energy delivered to FPL may include an adjustment at the election of the QS in order to implement the provisions of Rule 25-17.250 (6) (b), F.A.C. Subsequent to the determination of full avoided cost and subject to the provisions of Rule 25-17.0832(3) (a) through (d), F.A.C., a portion of the base energy costs associated with the avoided unit, mutually agreed upon by the utility and renewable energy generator, shall be fixed and amortized on a present value basis over the term of the contract starting, at the election of the QS, as early as the in-service date of the QS. "Base energy costs associated with the avoided unit" means the energy costs of the avoided unit to the extent the unit would have operated. The portion of the base energy costs mutually agreed to by the Company and the QS shall be specified in Appendix E. The Company will provide the QS with a schedule of "Fixed Energy Payments" over the term of the Standard Offer Contract based on the applicable information specified in Appendix E.

ESTIMATED AS-AVAILABLE ENERGY COST

~~For informational purposes only, the estimated incremental avoided energy costs for the next ten annual periods are provided in Appendix II to this schedule. In addition, avoided energy cost payments will include a payment for variable operation and maintenance expenses.~~

As required in Section 25-17.0832, F.A.C., as-available energy cost projections until the in-service date of the avoided unit will be provided within 30 days of receipt by FPL of a written request for such projections by any interested person.

~~A MW block size ranging from 58 MW to 65 MW has been used to calculate the estimated As-Available energy cost.~~

ESTIMATED UNIT FUEL COST

~~The~~As required in Section 25-17.0832, F.A.C., the estimated unit fuel costs ~~listed in Appendix II to this schedule are~~ associated with the Company's Avoided ~~Unit~~ and are based on current estimates of the price of natural gas will be provided within 30 days of a written request for such an estimate.

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(Continued from Sheet No. 10.304)

DELIVERY VOLTAGE ADJUSTMENT

Energy payments to a QS within the Company's service territory shall be adjusted according to the delivery voltage by the multipliers provided in Appendix II.

PERFORMANCE CRITERIA

Payments for Firm Capacity are conditioned on the QS's ability to maintain the following performance criteria:

A. Capacity Delivery Date
The Capacity Delivery Date shall be no later than the projected in-service date of the Company's Avoided Unit, as detailed in Appendix II.

B. Availability and Capacity Factor
The Facility's availability and capacity factor are used in the determination of firm capacity payments through a performance based calculation as detailed in Appendix B to the Company's Standard Offer Contract.

METERING REQUIREMENTS

A QS within the territory served by the Company shall be required to purchase from the Company hourly recording meters to measure their energy deliveries to the Company. Energy purchases from a QS outside the territory of the Company shall be measured as the quantities scheduled for interchange to the Company by the entity delivering Firm Capacity and Renewable Energy to the Company.

For the purpose of this Schedule, the on-peak hours shall be those hours occurring April 1 through October 31 Mondays through Fridays, from 12 noon to 9:00 pm. excluding Memorial Day, Independence Day and Labor Day; and November 1 through March 31 Mondays through Fridays from 6:00 a.m. to 10:00 a.m. and 6:00 p.m. to 10:00 p.m. prevailing Eastern time excluding Thanksgiving Day, Christmas Day, and New Years Day.. FPL shall have the right to change such On-Peak Hours by providing the QS a minimum of thirty calendar days' advance written notice.

BILLING OPTIONS

A QS, upon entering into a Standard Offer Contract for the sale of firm capacity and energy or prior to delivery of as-available energy, may elect to make either simultaneous purchases from and sales to the Company, or net sales to the Company; provided, however, that no such arrangement shall cause the QS to sell more than the Facility's net output. A decision on billing methods may only be changed: 1) when a QS selling as-available energy enters into a Standard Offer Contract for the sale of firm capacity and energy; 2) when a Standard Offer Contract expires or is lawfully terminated by either the QS or the Company; 3) when the QS is selling as-available energy and has not changed billing methods within the last twelve months; 4) when the election to change billing methods will not contravene this Tariff or the contract between the QS and the Company.

If a QS elects to change billing methods, such changes shall be subject to the following: 1) upon at least thirty days advance written notice to the Company; 2) the installation by the Company of any additional metering equipment reasonably required to effect the change in billing and upon payment by the QS for such metering equipment and its installation; and 3) upon completion and approval by the Company of any alteration(s) to the interconnection reasonably required to effect the change in billing and upon payment by the QS for such alteration(s).

Payments due a QS will be made monthly and normally by the twentieth business day following the end of the billing period. The kilowatt-hours sold by the QS and the applicable avoided energy rates at which payments are being made shall accompany the payment to the QS.

A statement covering the charges and payments due the QS is rendered monthly, and payment normally is made by the twentieth business day following the end of the billing period.

(Continued on Sheet No. 10.306)

FLORIDA POWER & LIGHT COMPANY

Seventh Revised Sheet No. 10.306
Cancels Sixth Revised Sheet No. 10.306

(Continued from Sheet No. 10.305)

CHARGES TO ENERGY FACILITY

The QS shall be responsible for all applicable charges as currently approved or as they may be approved by the Florida Public Service Commission, including, but not limited to:

A. Customer Charges:
Monthly customer charges for meter reading, billing and other applicable administrative costs as per applicable Customer Rate Schedule.

B. Interconnection Charge for Non-Variable Utility Expenses
The QS shall bear the cost required for interconnection, including the metering. The QS shall have the option of (i) payment in full for the interconnection costs including the time value of money during the construction of the interconnection facilities and providing a Bond, Letter of Credit or comparable assurance of payment acceptable to the Company adequate to cover the interconnection cost estimates, (ii) payment of monthly invoices from the Company for actual costs progressively incurred by the Company in installing the interconnection facilities, or (iii) upon a showing of credit worthiness, making equal monthly installment payments over a period no longer than thirty-six (36) months toward the full cost of interconnection. In the latter case, the Company shall assess interest at the rate then prevailing for thirty (30) day highest grade commercial paper, such rate to be specified by the Company thirty (30) days prior to the date of each installment payment by the QS.

C. Interconnection Charge for Variable Utility Expenses
The QS shall be billed monthly for the variable utility expenses associated with the operation and maintenance of the interconnection facilities. These include (a) the Company's inspections of the interconnection facilities and (b) maintenance of any equipment beyond that which would be required to provide normal electric service to the QS if no sales to the Company were involved.

In lieu of payment for actual charges, the QS may pay a monthly charge equal to a percentage of the installed cost of the interconnection facilities as provided in Appendix II.

D. Taxes and Assessments
In the event that FPL becomes liable for additional taxes, including interest and/or penalties arising from an Internal Revenue Service's determination, through audit, ruling or other authority, that FPL's payments to the QS for capacity under options B, C, D, E or for energy pursuant to the Fixed Firm Energy Payment Option D are not fully deductible when paid (additional tax liability), FPL may bill the QS monthly for the costs, including carrying charges, interest and/or penalties, associated with the fact that all or a portion of these capacity payments are not currently deductible for federal and/or state income tax purposes. FPL, at its option, may offset these costs against amounts due the QS hereunder. These costs would be calculated so as to place FPL in the same economic position in which it would have been if the entire early, levelized or early levelized capacity payments or the Fixed Firm Energy Payment had been deductible in the period in which the payments were made. If FPL decides to appeal the Internal Revenue Service's determination, the decision as to whether the appeal should be made through the administrative or judicial process or both, and all subsequent decisions pertaining to the appeal (both substantive and procedural), shall rest exclusively with FPL.

(Continued on Sheet No. 10.307)

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FLORIDA POWER & LIGHT COMPANY **Original Sheet No. 10.307**

(Continued from Sheet No. 10.306)

TERMS OF SERVICE

(1) It shall be the QS's responsibility to inform the Company of any change in its electric generation capability.

(2) Any electric service delivered by the Company to a QS located in the Company's service area shall be subject to the following terms and conditions:

(a) A QS shall be metered separately and billed under the applicable retail rate schedule(s), whose terms and conditions shall pertain.

(b) A security deposit will be required in accordance with FPSC Rules 25-17.082(5) and 25-6.097, F.A.C., and the following:

(i) In the first year of operation, the security deposit should be based upon the singular month in which the QS's projected purchases from the Company exceed, by the greatest amount, the Company's estimated purchases from the QS. The security deposit should be equal to twice the amount of the difference estimated for that month. The deposit is required upon interconnection.

(ii) For each year thereafter, a review of the actual sales and purchases between the QS and the Company will be conducted to determine the actual month of maximum difference. The security deposit should be adjusted to equal twice the greatest amount by which the actual monthly purchases by the QS exceed the actual sales to the Company in that month.

(c) The Company shall specify the point of interconnection and voltage level.

(d) The QS must enter into an interconnection agreement with the Company which will, among other things, specify safety and reliability standards for the interconnection to the Company's system. In most instances, the Company's filed Interconnection Agreement for Qualifying Facilities will be used; however, special features of the QS or its interconnection to the Company's facilities may require modifications to this Interconnection Agreement or the safety and reliability standards contained therein.

(3) Service under this rate schedule is subject to the rules and regulations of the Company and the Florida Public Service Commission.

SPECIAL PROVISIONS

(1) Special contracts deviating from the above standard rate schedule are allowable provided the Company agrees to them and they are approved by the Florida Public Service Commission.

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APPENDIX I
TO RATE SCHEDULE QS-2
CALCULATION OF VALUE OF DEFERRAL PAYMENTS

APPLICABILITY
Appendix I provides a detailed description of the methodology used by the Company to calculate the monthly values of deferring or avoiding the Company's Avoided Unit identified in Schedule QS-2. When used in conjunction with the current FPSC-approved cost parameters associated with the Company's Avoided Unit contained in Appendix II, a QS may determine the applicable value of deferral capacity payment rate associated with the timing and operation of its particular facility should the QS enter into a Standard Offer Contract with the Company.

CALCULATION OF VALUE OF DEFERRAL OPTION A
FPSC Rule 25-17.0832(5) specifies that avoided capacity costs, in dollars per kilowatt per month, associated with capacity sold to a utility by a QS pursuant to the Company's Standard Offer Contract shall be defined as the year-by-year value of deferral of the Company's Avoided Unit. The year-by-year value of deferral shall be the difference in revenue requirements associated with deferring the Company's Avoided Unit one year, and shall be calculated as follows:

Where, for a one year deferral:

VAC_n = utility's monthly value of avoided capacity and O & M, in dollars per kilowatt per month, for each month of year n;

K = present value of carrying charges for one dollar of investment over L years with carrying charges computed using average annual rate base and assumed to be paid at the middle of each year and present valued to the middle of the first year;

R = $(1 + ip) / (1 + r)$;

I_o = total direct and indirect cost, in mid-year dollars per kilowatt including AFUDC but excluding CWIP, of the Company's Avoided Unit with an in-service date of year n, including all identifiable and quantifiable costs relating to the construction of the Company's Avoided Unit which would have been paid had the Unit been constructed;

O_n = total fixed operation and maintenance expense for the year n, in mid-year dollars per kilowatt per year, of the Company's Avoided Unit;

i_p = annual escalation rate associated with the plant cost of the Company's Avoided Unit(s);

i_o = annual escalation rate associated with the operation and maintenance expense of the Company's Avoided Unit(s);

r = annual discount rate, defined as the utility's incremental after-tax cost of capital;

L = expected life of the Company's Avoided Unit(s); and

n = year for which the Company's Avoided Unit(s) is (are) deferred starting with its (their) original anticipated in-service date(s) and ending with the termination of the Company's Standard Offer Contract.

(Continued on Sheet No. 10.309)

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FLORIDA POWER & LIGHT COMPANY **Original Sheet No. 10.309**

(Continued from Sheet No. 10.308)

CALCULATION OF FIXED VALUE OF DEFERRAL PAYMENTS – EARLY CAPACITY–OPTION B

Normally, payments for firm capacity shall not commence until the in-service date of the Company's Avoided Unit(s). At the option of the QS, however, the Company may begin making payments for early capacity consisting of the capital cost component of the value of a year-by-year deferral of the Company's Avoided Unit starting as early as the in-service date of the QS facility. When such payments for early capacity are elected, the avoided capital cost component of capacity payments shall be paid monthly commencing no earlier than the Capacity Delivery Date of the QS, and shall be calculated as follows:

$$A_m = A_c \frac{(1+ip)^{(m-1)}}{12} + A_o \frac{(1+io)^{(m-1)}}{12} \quad for\ m = 1\ to\ t$$

Where:

A_m = monthly payments to be made to the QS for each month of the contract year n, in dollars per kilowatt per month in which QS delivers capacity pursuant to the early capacity option;

i_p = annual escalation rate associated with the plant cost of the Company's Avoided Unit(s);

i_o = annual escalation rate associated with the operation and maintenance expense of the Company's Avoided Unit(s);

m = year for which the fixed value of deferral payments under the early capacity option are made to a QS, starting in year one and ending in the year t;

t = the term, in years, of the Standard Offer Contract;

$$A_c = F\ [\ (1-R)/(1-R^{t})\ ]$$

Where:

F = the cumulative present value, in the year that the contractual payments will begin, of the avoided capital cost component of capacity payments which would have been made had capacity payments commenced with the anticipated in-service date of the Company's Avoided Unit(s);

R = $(1+ip)/(1+r)$

r = annual discount rate, defined as the Company's incremental after-tax cost of capital; and

$$A_o = G\ [\ (1-R)/(1-R^{t})\ ]$$

Where:

G = The cumulative present value, in the year that the contractual payments will begin, of the avoided fixed operation and maintenance expense component of capacity payments which would have been made had capacity payments commenced with the anticipated in-service date of the Company's Avoided Unit(s).

R = $(1+io)/(1+r)$

The currently approved parameters applicable to the formulas above are found in Appendix II.

(Continued on Sheet No. 10.310)

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(Continued from Sheet No. 10.309)

CALCULATION OF FIXED VALUE OF DEFERRAL PAYMENTS – LEVELIZED AND EARLY LEVELIZED CAPACITY – OPTION C & OPTION D, RESPECTIVELY

Monthly fixed value of deferral payments for levelized and early levelized capacity shall be calculated as follows:

$$P_L = \frac{F}{12} \times \frac{r}{1-(1+r)^{-t}} + O$$

Where:

P_L = the monthly levelized capacity payment, starting on or prior to the in-service date of the Company's Avoided Unit(s);

F = the cumulative present value, in the year that the contractual payments will begin, of the avoided capital cost component of the capacity payments which would have been made had the capacity payments not been levelized;

r = the annual discount rate, defined as the Company's incremental after-tax cost of capital;

t = the term, in years, of the Standard Offer Contract;

O = the monthly fixed operation and maintenance component of the capacity payments, calculated in accordance with calculation of the fixed value of deferral payments for the levelized capacity or the early levelized capacity options.

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Cancels ~~Eighth~~Ninth Revised Sheet No. 10.311

FLORIDA POWER & LIGHT COMPANY

APPENDIX II

TO RATE SCHEDULE QS-2
AVOIDED UNIT INFORMATION

The Company's Avoided Unit has been determined to be a ~~1,317~~1,622 MW Greenfield Combined Cycle Unit with an in-service date of June 1, ~~2023~~2024 and a heat rate of ~~6,293~~6,304 Btu/kWh.

EXAMPLE STANDARD OFFER CONTRACT AVOIDED CAPACITY PAYMENTS
FOR A CONTRACT TERM OF TEN YEARS FROM THE IN-SERVICE DATE OF THE AVOIDED UNIT
($/KW/MONTH)

	Option A	Option B	Option C	Option D
Contract Year	Normal Capacity Payment	Early Capacity Payment	Levelized Capacity Payment	Early Levelized Capacity Payment
~~2015~~2020	$ -	$ ~~-2.55~~5.28	$ -	$ ~~-3.16~~ 5.93
~~2016~~2021	$ -	$ ~~-2.63~~-5.39	$ -	$ ~~-3.16~~ 5.93
~~2017~~2022	$ -	$ ~~-2.70~~-5.50	$ -	$ ~~-3.16~~ 5.93
~~2018~~2023	$ -	$ ~~-2.79~~-5.61	$ -	$ ~~-3.16~~ 5.93
~~2019~~2024	$ ~~7.65~~ 8.72	$ ~~5.94~~5.72	$ -9.56	$ ~~6.67~~5.93
~~2020~~2025	$ ~~-7.65~~-8.80	$ ~~6.06~~5.83	$ -9.56	$ ~~6.67~~5.93
~~2021~~2026	$ ~~-8.10~~-9.09	$ ~~6.18~~5.95	$ -9.56	$ ~~6.67~~5.93
~~2022~~2027	$ ~~-8.34~~-9.29	$ ~~6.30~~6.07	$ -9.56	$ ~~6.67~~5.93
~~2023~~2028	$ ~~-9.81~~9.48	$ ~~6.43~~6.19	$ ~~10.75~~9.56	$ ~~6.67~~5.93
~~2024~~2029	$ ~~10.01~~9.69	$ ~~6.56~~6.31	$ ~~10.75~~9.56	$ ~~6.67~~5.93
~~2025~~2030	$ ~~10.23~~9.89	$ ~~6.69~~6.44	$ ~~10.75~~9.56	$ ~~6.67~~5.93
~~2026~~2031	$ ~~10.41~~10.11	$ ~~6.82~~6.57	$ ~~10.75~~9.56	$ ~~6.67~~5.93
~~2027~~2032	$ ~~10.66~~10.32	$ ~~6.96~~6.70	$ ~~10.75~~9.56	$ ~~6.67~~5.93
~~2028~~2033	$ ~~10.89~~10.54	$ ~~7.10~~6.84	$ ~~10.75~~9.56	$ ~~6.67~~5.93
~~2029~~	~~$ 11.12~~	~~$ 7.24~~	~~$ 10.75~~	~~$ 6.67~~
~~2030~~	~~$ 11.36~~	~~$ 7.39~~	~~$ 10.75~~	~~$ 6.67~~
~~2031~~	~~$ 11.60~~	~~$ 7.53~~	~~$ 10.75~~	~~$ 6.67~~
~~2032~~	~~$ 11.84~~	~~$ 7.68~~	~~$ 10.75~~	~~$ 6.67~~
~~2033~~2034	$ ~~12.10~~10.77	$ ~~7.84~~6.97	$ ~~10.75~~9.56	$ ~~6.67~~5.93

ESTIMATED AS-AVAILABLE ENERGY COST

For informational purposes, the most recent estimated incremental avoided energy costs for the next ten years ~~are as follows:~~ will be provided within thirty (30) days of written request.

~~Applicable Period~~	~~Estimated As-Available Energy Cost~~ ~~On-Peak (¢/kWh)~~	~~Off-Peak (¢/kWh)~~	~~Average (¢/kWh)~~

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FLORIDA POWER & LIGHT COMPANY

~~Ninth~~Tenth Revised Sheet No. 10.311
Cancels ~~Eighth~~Ninth Revised Sheet No. 10.311

~~2015~~	~~4.50~~	~~2.96~~	~~3.41~~
~~2016~~	~~5.68~~	~~3.07~~	~~3.84~~
~~2017~~	~~3.31~~	~~2.72~~	~~2.89~~
~~2018~~	~~3.67~~	~~2.97~~	~~3.17~~
~~2019~~	~~5.59~~	~~3.51~~	~~4.12~~
~~2020~~	~~4.98~~	~~4.02~~	~~4.30~~
~~2021~~	~~5.58~~	~~4.11~~	~~4.58~~
~~2022~~	~~6.35~~	~~4.78~~	~~5.26~~
~~2023~~	~~7.02~~	~~5.09~~	~~5.68~~
~~2024~~	~~6.29~~	~~4.90~~	~~5.31~~
~~2025~~	~~6.35~~	~~5.03~~	~~5.42~~

ESTIMATED UNIT FUEL COSTS ($/MMBtu):
The most recent estimated unit fuel costs ~~listed below are~~ for the Company's avoided unit ~~and are based on current estimates~~ will be provided within thirty (30) days of written request.

~~2023~~	~~2024~~	~~2025~~	~~2026~~	~~2027~~	~~2028~~	~~2029~~	~~2030~~	~~2031~~
~~6.06~~	~~6.24~~	~~6.43~~	~~6.62~~	~~6.82~~	~~7.02~~	~~7.23~~	~~7.44~~	~~7.66~~

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FLORIDA POWER & LIGHT COMPANY

~~Second~~Third Revised Sheet No. 10.311.1
Cancels ~~First~~Second Sheet No. 10.311.1

FIXED VALUE OF DEFERRAL PAYMENTS - NORMAL CAPACITY OPTION PARAMETERS

Where, for a one year deferral:			Value
VAC_m	=	Company's value of avoided capacity and O&M, in dollars per kilowatt per month, during month m;	~~$9.84~~8.72
K	=	present value of carrying charges for one dollar of investment over L years with carrying charges computed using average annual rate base and assumed to be paid at the middle of each year and present valued to the middle of the first year;	~~1.5073~~1.4532
I_a	=	total direct and indirect cost, in mid-year dollars per kilowatt including AFUDC but excluding CWIP, of the Company's Avoided Unit with an in-service date of yearn;	~~$933.15~~818.11
O_n	=	total fixed operation and maintenance expense, for the year n, in mid-year dollars per kilowatt per year, of the Company's Avoided Unit;	~~$27.83~~18.99
i_p	=	annual escalation rate associated with the plant cost of the Company's Avoided Unit;	~~3.03.0~~%
i_o	=	annual escalation rate associated with the operation and maintenance expense of the Company's Avoided Unit;	2.50%
r	=	annual discount rate, defined as the Company's incremental after-tax cost of capital;	~~7.5107.451~~%
L	=	expected life of the Company's Avoided Unit;	30
n	=	year for which the Company's Avoided Unit is deferred starting with its original anticipated in-service date and ending with the termination of the Standard Offer Contract.	~~2032~~2024

FIXED VALUE OF DEFERRAL PAYMENTS - EARLY CAPACITY OPTION PARAMETERS

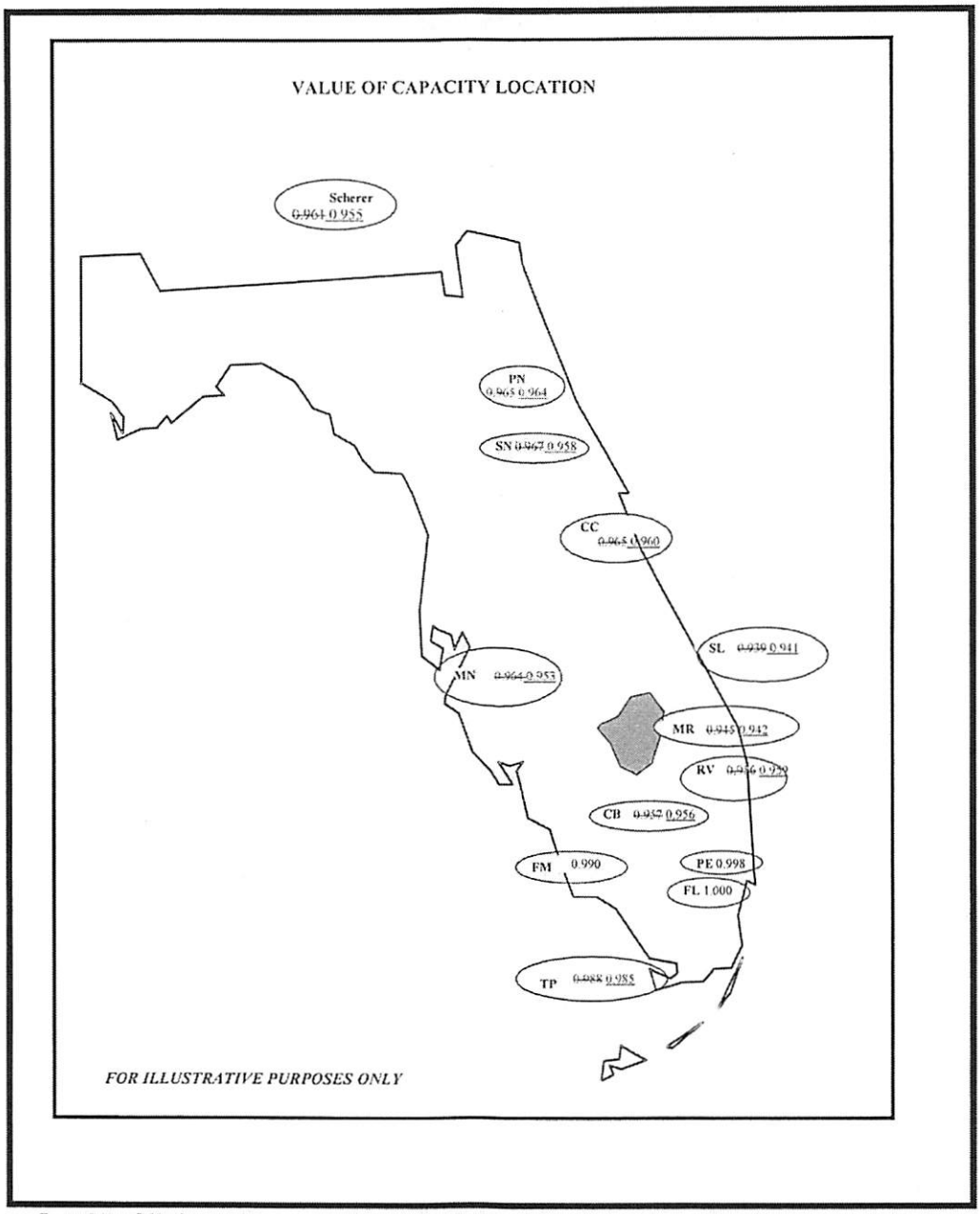
A_m	=	monthly capacity payments to be made to the QS starting on the year the QS elects to start receiving early capacity payments, in dollars per kilowatt per month;	*
i_p	=	annual escalation rate associated with the plant cost of the Company's Avoided Unit;	~~3.03.0~~%
i_o	=	annual escalation rate associated with the operation and maintenance expense of the Company's Avoided Unit;	2.50%
n	=	year for which early capacity payments to a QS are to begin; (at the election of the QS early capacity payments may commence anytime after the actual in-service date of the QS facility and before the anticipated in-service date of the Company's avoided unit)	*
F	=	the cumulative present value of the avoided capital cost component of capacity payments which would have been made had capacity payments commenced with the anticipated in-service date of the Company's Avoided Unit and continued for a period of 10 years;	~~$667.11~~780.78
r	=	annual discount rate, defined as the Company's incremental after-tax cost of capital;	~~7.514~~7.451%
t	=	the term, in years, of the Standard Offer Contract for the purchase of firm capacity commencing in the year the QS elects to start receiving early capacity payments prior to the in-service date of the Company's Avoided Unit;	*
G	=	the cumulative present value of the avoided fixed operation and maintenance expense component of capacity payments which would have been made had capacity payments commenced with the anticipated in-service date of the Company's Avoided Unit and continued for a period of 10 years.	~~$187.99~~ 210.77

*From Appendix E

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: ~~August 27, 2015~~

FLORIDA POWER & LIGHT COMPANY

Fifth ~~Fourth~~ Revised Sheet No. 10.312
Cancels ~~Fourth~~ Revised Sheet No. 10.312



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

Second Revised Sheet No. 10.313
FLORIDA POWER & LIGHT COMPANY Cancels First Revised Sheet No. 10.313

APPENDIX B
TO THE STANDARD OFFER CONTRACT
FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY
FROM RENEWABLE ENERGY FACILITIES
OR QUALIFYING FACILITIES WITH A DESIGN CAPACITY OF 100 KW OR LESS
PAY FOR PERFORMANCE PROVISIONS MONTHLY CAPACITY PAYMENT CALCULATION

1. Monthly Capacity Payments (MCP) for each Monthly Billing Period shall be computed according to the following:

A. In the event that the Annual Capacity Billing Factor ("ACBF"), as defined below, is less than 80%, then no Monthly Capacity Payment shall be due. That is:

$$MCP = 0$$

B. In the event that the ACBF is equal to or greater than 80% but less than 94%, then the Monthly Capacity Payment shall be calculated by using the following formula:

$$MCP = BCP \times [1+4 \times (ACBF - 94\%)] \times CC$$

C. In the event that the ACBF is equal to or greater than 94%, then the Monthly Capacity Payment shall be calculated by using the following formula:

$$MCP = BCP \times CC$$

Where:

MCP = Monthly Capacity Payment in dollars.

BCP = Base Capacity Payment in $/KW/Month as specified in FPL's Rate Schedule QS-2.

CC = Committed Capacity in KW.

ACBF = Annual Capacity Billing Factor. This factor is calculated using the 12 months rolling average of the Monthly Capacity Factor. This 12 month rolling average shall be defined as the sum of the 12 consecutive Monthly Capacity Factors preceding the date of calculation, divided by 12. During the first 12 consecutive Monthly Billing Periods, commencing with the first Monthly Billing Period in which Capacity payments are to be made, the calculation of the Annual Capacity Billing Factor shall be performed as follows: (a) during the first Monthly Billing Period, the Annual Capacity Billing Factor shall be equal to the Monthly Capacity Factor; (b) thereafter, the calculation of the Annual Capacity Billing Factor shall be computed by dividing the sum of the Monthly Capacity Factors during the first year's Monthly Billing Periods in which Capacity payments are to be made by the number of Monthly Billing Periods which have elapsed. This calculation shall be performed at the end of each Monthly Billing Period until enough Monthly Billing Periods have elapsed to calculate a true 12-month rolling average Annual Capacity Billing Factor. Periods during which the Facility has temporarily set its Committed Capacity equal to 0 KW due to a Force Majeure event pursuant to Section 16 shall be excluded from the applicable capacity factor calculation.

MCF = Monthly Capacity Factor. The sum of (i) the Hourly Factors of the Non-Dispatch Hours plus (ii) the Hourly Factors of the Dispatch Hours or the Hourly factors of the hours when FPL requested reduced deliveries pursuant to Sections 8.4.6 and 8.4.8 (Reduced Delivery Hour); divided by the number of hours in the Monthly Billing Period.

HFNDH = Hourly Factor of a Non-Dispatch Hour. The energy received during the hour divided by the Committed Capacity. For purposes of calculating the Hourly Factor of a Non-Dispatch Hour the energy received shall not exceed the Committed Capacity.

HFDH = Hourly Factor of a Dispatch Hour or a Reduced Delivery Hour. The scheduled energy received divided by the scheduled energy requested. For purposes of calculating the Hourly Factor of a Dispatch Hour or the Hourly Factor of a Reduced Delivery Hour the scheduled energy received shall not exceed the scheduled energy requested.

On-Peak Hours = Those hours occurring April 1 through October 31 Mondays through Fridays, from 12 noon to 9:00 p.m. excluding Memorial Day, Independence Day and Labor Day; and November 1 through March 31 Mondays through Fridays from 6:00 a.m. to 10:00 a.m. and 6:00 p.m. to 10:00 p.m. prevailing Eastern time excluding Thanksgiving Day, Christmas Day and New Year's Day. FPL shall have the right to change such On- Peak Hours by providing the QS a minimum of thirty calendar days' advance notice.

Monthly Billing Period = The period beginning on the first calendar day of each calendar month, except that the initial Monthly Billing Period shall consist of the period beginning 12:01 a.m. on the Capacity Delivery Period Date and ending with the last calendar day of such month.

Scheduled Energy and Dispatch Hours are as defined in Section 8.4.7 of the Standard Offer Contract.

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APPENDIX C
TO THE STANDARD OFFER CONTRACT
TERMINATION FEE

The Termination Fee shall be the sum of the values for each month beginning with the month in which the Capacity Delivery Date occurs through the month of termination (or month of calculation, as the case may be), computed according to the following formula:

Termination Fee = Termination Fee applicable to Capacity Payment Option plus Termination Fee applicable to Fixed Firm Energy Option

Termination Fee applicable to Capacity Payment Options B, C, D and E

$$\sum_{i=1}^{n} (MCP_i - MCPC_i) \times t^{(n-i)}$$

with: $MCPC_i = 0$ for all periods prior to the in-service date of the Company's Avoided Unit;

where:

- i = number of the Monthly Billing Period commencing with the Capacity Delivery Date (i.e., the month in which Capacity Delivery Date occurs = 1; the month following the month in which Capacity Delivery Date occurs = 2; etc.)
- n = the number of Monthly Billing Periods which have elapsed from the month in which the Capacity Delivery Date occurs through the month of termination (or month of calculation, as the case may be)
- t = the future value of an amount factor necessary to compound a sum monthly so the annual percentage rate derived will equal FPL's incremental after-tax avoided cost of capital (defined as r in QS-2). For any Monthly Billing Period in which $MCPC_i$ is greater than MCP_i, t shall equal 1.
- MCP_i = Monthly Capacity Payment paid to QS corresponding to the Monthly Billing Period i, calculated in accordance with Appendix B.
- $MCPC_i$ = Monthly Capacity Payment for Option A corresponding to the Monthly Billing Period i, calculated in accordance with QS-2

In the event that for any Monthly Billing Period, the computation of the value of the Capacity Payment Termination Fee for such Monthly Billing Period (as set forth above) yields a value equal to or greater than zero, the amount of the Capacity Payment Termination Fee shall be increased by the amount of such value.

In the event that for any Monthly Billing Period, the computation of the value of the Capacity Payment Termination Fee for such Monthly Billing Period (as set forth above) yields a value less than zero, the amount of the Capacity Payment Termination Fee shall be decreased by the amount of such value expressed as a positive number (the "Initial Reduction Value"); provided, however, that such Initial Reduction Value shall be subject to the following adjustments (the Initial Reduction Value, as adjusted, the "Reduction Value"):

a. In the event that in the applicable Monthly Billing Period the Annual Capacity Billing Factor (ACBF), as defined in Appendix B is less than 80%, then the Initial Reduction Value shall be adjusted to equal zero (Reduction Value = 0), and the Capacity Payment Termination Fee shall not be reduced for the applicable Monthly Billing Period.
b. In the event that in the applicable Monthly Billing Period the Annual Capacity Billing Factor (ACBF), as defined in Appendix B, is equal to or greater than 80% but less than 97%, then the Reduction Value shall be determined as follows:

Reduction Value = Initial Reduction Value x [0.04 x (ACBF - 72)]

For the applicable Monthly Billing Period, the Termination Fee shall be reduced by the amount of such Reduction Value.

In no event shall FPL be liable to the QS at any time for any amount by which the Capacity Payment Termination Fee, adjusted in accordance with the foregoing, is less than zero (0).

Termination Fee applicable to the Fixed Firm Energy Payment Option D

Prior to in-service date of avoided unit:
The Termination Fee for the Fixed Firm Energy Option shall be equal to the cumulative sum of the Fixed Firm Energy Payments made to the QS pursuant to Option D, starting with the in-service date of the QS facility, for each billing cycle. Such number shall reach the maximum amount on the billing cycle immediately preceding the billing cycle associated with the in-service date of the Avoided Unit.

After in-service date of avoided unit:
The Termination Fee shall be decreased each billing cycle following the in-service date of the avoided unit by an amount equal to the difference between the projected Fixed Energy Cost that was used in the calculation to determine the base energy cost to be fixed and amortized pursuant to Option D for such billing cycle and the amortized Fixed Firm Energy Payment in cents/KWH times the energy delivered by the QS not to exceed the MWH block specified in Appendix E.

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Effective: May 22, 2007

APPENDIX D
TO THE STANDARD OFFER CONTRACT
DETAILED PROJECT INFORMATION

Each eligible Contract received by FPL will be evaluated to determine if the underlying QS project is financially and technically viable. The QS shall, to the extent available, provide FPL with a detailed project proposal which addresses the information requested below.

I. **FACILITY DESCRIPTION**

- Project Name
- Project Location
  - Street Address
  - Site Plot Plan
  - Legal Description of Site
- Generating Technology
- Facility Classification (include types from statute)
- Primary Fuel
- Alternate Fuel (if applicable)
- Committed Capacity
- Expected In-Service Date
- Steam Host (for cogeneration facilities)
  - Street Address
  - Legal Description of Steam Host
  - Host's annual steam requirements (lbs/yr)
- Contact Person
  - Individual's Name and Title
  - Company Name
  - Address
  - Telephone Number
  - Telecopy Number

II. **PROJECT PARTICIPANTS**

- Indicate the entities responsible for the following project management activities and provide a detailed description of the experience and capabilities of the entities:
  - Project Development
  - Siting and Licensing the Facility
  - Designing the Facility
  - Constructing the Facility
  - Securing the Fuel Supply
  - Operating the Facility
- Provide details on all electrical generation facilities which are currently under construction or operational which were developed by the QS.
- Describe the financing structure for the projects identified above, including the type of financing used, the permanent financing term, the major lenders, and the percentage of equity invested at financial closing.

(Continued on Sheet No. 10.316)

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: May 22, 2007

(Continued from Sheet No. 10.315)

III. FUEL SUPPLY

- Describe all fuels to be used to generate electricity at the Facility. Indicate the specific physical and chemical characteristics of each fuel type (*e.g.*, Btu content, sulfur content, ash content, etc.). Identify special considerations regarding fuel supply origin, source and handling, storage and processing requirements.

- Provide annual fuel requirements (AFR) necessary to support the requirements pursuant to Section 366.91, Florida Statutes, and the planned levels of generation and list the assumptions used to determine these quantities.

- Provide a summary of the status of the fuel supply arrangements in place to meet the ARFR in each year of the proposed operating life of the Facility. Use the categories below to describe the current arrangement for securing the AFR.

Category	Description of Fuel Supply Arrangement fuel is from a fully developed
owned =	source owned by one or more of the project participants
contract =	fully executed firm fuel contract exists between the developer(s) and fuel supplier(s)
LOI =	a letter of intent for the fuel supply exists between developer(s) and fuel supplier(s)
REF =	renewable energy facility will burn biomass, waste, or another renewable resource
spot =	fuel supply will be purchased on the spot market
none =	no firm fuel supply arrangement currently in place
other =	fuel supply arrangement which does not fit any of the above categories (please describe)

- Indicate the percentage of the Facility's AFR which is covered by the above fuel supply arrangement(s) for each proposed operating year. The percent of AFR covered for each operating year must total 100%. For fuel supply arrangements identified as owned, contract, or LOI, provide documentation to support this category and explain the fuel price mechanism of the arrangement. In addition, indicate whether or not the fuel price includes delivery and, if so, to what location.

- Describe fuel transportation networks available for delivering all primary and secondary fuel to the Facility site. Indicate the mode, route and distance of each segment of the journey, from fuel source to the Energy Facility site. Discuss the current status and pertinent factors impacting future availability of the transportation network.

- Provide annual fuel transportation requirements (AFTR) necessary to support planned levels of generation and list the assumptions used to determine these quantities.

- Provide a summary of the status of the fuel transportation arrangements in place to meet the AFTR in each year of the proposed operating life of the Energy Facility. Use the categories below to describe the current arrangement for securing the AFTR.

owned =	fuel transport via a fully developed system owned by one or more of the project participants
contract =	fully executed firm transportation contract exists between the developer(s) and fuel transporter(s)
LOI =	a letter of intent for fuel transport exists between developer(s) and fuel transporter(s)
Spot =	fuel transportation will be purchased on the spot market
none =	no firm fuel transportation arrangement currently in place
other =	fuel transportation arrangement which does not fit any of the above categories (please describe)

- Indicate the percentage of the Facility's AFR which is covered by the above fuel supply arrangement(s) for each proposed operating year. The percent of AFR covered for each operating year must total 100%. For fuel supply arrangements identified as owned, contract, or LOI, provide documentation to support this category and explain the transportation price mechanism of the arrangement.

- Provide the maximum, minimum, and average fuel inventory levels to be maintained for primary and secondary fuels at the Facility site. List the assumptions used in determining the inventory levels.

(Continued on Sheet No. 10.317)

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: May 22, 2007

(Continued from Sheet No. 10.316)

IV. PLANT DISPATCHABILITY/CONTROLLABILITY

- Provide the following operating characteristics and a detailed explanation supporting the performance capabilities indicated.
  - Ramp Rate (MW/minute)
  - Peak Capability (% above Committed Capacity)
  - Minimum power level (% of Committed Capacity)
  - Facility Turnaround Time, Hot to Hot (hours)
  - Start-up Time from Cold Shutdown (hours)
  - Unit Cycling (# cycles/yr)
  - MW and MVAR Control (AGC, Manual, Other (please explain))

V. SITING AND LICENSING

- Provide a licensing/permitting milestone schedule which lists all permits, licenses and variances required to site the Facility. The milestone schedule shall also identify key milestone dates for baseline monitoring, application preparation, agency review, certification and licensing/siting board approval, and agency permit issuance.
- Provide a licensing/permitting plan that addresses the issues of air emissions, water use, wastewater discharge, wetlands, endangered species, protected properties, solid waste, surrounding land use, zoning for the Facility, associated linear facilities, and support of and opposition to the Facility.
- List the emission/effluent discharge limits the Facility will meet, and describe in detail the pollution control equipment to be used to meet these limits.

VI. FACILITY DEVELOPMENT AND PERFORMANCE

- Submit a detailed engineering, procurement, construction, startup and commercial operation schedule. The schedule shall include milestones for site acquisition, engineering phases, selection of the major equipment vendors, architect engineer, EPC contractor, and Facility operator, steam host integration, and delivery of major equipment. A discussion of the current status of each milestone should also be included where applicable.
- Attach a diagram of the power block arrangement. Provide a list of the major equipment vendors and the name and model number of the major equipment to be installed.
- Provide a detailed description of the proposed environmental control technology for the Facility and describe the capabilities of the proposed technology.
- Attach preliminary flow diagrams for the steam system, water system, and fuel system, and a main electrical one line diagram for the Facility.
- State the expected heat rate (HHV) at 75 degrees Fahrenheit for loads of 100%, 75%, and 50%. In addition, attach a preliminary heat balance for the Facility.
- [NOTE: add any requirements related to demonstrating that the facility meets the requirements under the statute or applicable rules]

(Continued on Sheet No. 10.318)

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: May 22, 2007

FLORIDA POWER & LIGHT COMPANY **Original Sheet No. 10.318**

(Continued from Sheet No. 10.317)

VII. FINANCIAL

- Provide FPL with assurances that the proposed QS project is financially viable consistent with FPSC Rule 25-17.0832(4) (c) by attaching a detailed pro-forma cash flow analysis. The pro-forma must include, at a minimum, the following assumptions for each year of the project.

  - Annual Project Revenues

    - Capacity Payments ($ and $/KW/Mo)
    - Variable O&M ($ and $/MWh)
    - Energy ($ and $/MWh)
    - Steam Revenues ($ and %/lb.)
    - Tipping Fees ($ and $/ton)
    - Interest Income
    - Other Revenues
    - Variable O&M Escalation (%/yr)
    - Energy Escalation (%/yr)
    - Steam Escalation (%/yr)
    - Tipping Fee Escalation (%/yr)

  - Annual Project Expenses

    - Fixed O&M ($ and $/KW/Mo)
    - Variable O&M ($ and $/MWh)
    - Energy ($ and $/MWh)
    - Property Taxes ($)
    - Insurance ($)
    - Emission Compliance ($ and $/MWh)
    - Depreciation ($ and %/yr)
    - Other Expenses ($)
    - Fixed O&M Escalation (%/yr)
    - Variable O&M Escalation (%/yr)
    - Energy Escalation (%/yr)

  - Other Project Information

    - Installed Cost of the Energy Facility ($ and $/KW)
    - Committed Capacity (KW)
    - Average Heat Rate - HHV (MBTU/KWh)
    - Federal Income Tax Rate (%)
    - Facility Capacity Factor (%)
    - Energy Sold to FPL (MWH)

  - Permanent Financing

    - Permanent Financing Term (yrs)
    - Project Capital Structure (percentage of long-term debt, subordinated debt, tax exempt debt, and equity)
    - Financing Costs (cost of long-term debt, subordinated debt, tax exempt debt, and equity)
    - Annual Interest Expense
    - Annual Debt Service ($)
    - Amortization Schedule (beginning balance, interest expense, principal reduction, ending balance)

- Provide details of the financing plan for the project and indicate whether the project will be non-recourse project financed. If it will not be project financed please explain the alternative financing arrangement.

- Submit financial statements for the last two years on the principals of the project, and provide an illustration of the project ownership structure.

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APPENDIX E
TO THE STANDARD OFFER CONTRACT
CONTRACT OPTIONS TO BE SELECTED BY QS

Term of Contract

Execution date _____
Termination date _____

Firm Capacity Rates

Commencement date for deliveries of Firm Energy and Capacity _____

Capacity Payment Option Selected (from available Options A through E) _____
If Option E is selected proposed payment stream:

_____

_____

_____

Schedule of Capacity Payments to be provided by the Company based on applicable parameters follows:

Year	$/KW/Month

Energy Rates

Energy payment Options selected applicable to energy produced by the QS and delivered to the Company (from available Option A or B and D)
Select from Option A or B _____
And
Select D _____

If Option D is selected by the QS; the Company and the QS mutually agree on fixing and amortizing the following portion of the Base Energy Costs associated with the Avoided Unit
_____% which yields _____MWH

Projected Energy Cost of Energy Produced by Avoided Unit (provided by the Company):

Year	Projected Fixed Energy Cost (in Cents/KWH or in Dollars)

Based on the projections of Energy Costs Produced by the Avoided Unit and the mutually agreed upon Portion of the Base Energy Costs associated with the Avoided Unit the Fixed Energy Payment shall be _____$/MWH or $_____(as applicable).

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Effective: May 22, 2007

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: August 31, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (Ellis)
Division of Accounting and Finance (Barrett, Lester)
Office of the General Counsel (Janjic)

RE: Docket No. 160151-EI – Petition for approval of stipulation to amend revised and restated stipulation and settlement agreement by Duke Energy Florida, LLC.

AGENDA: 09/13/16 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brisé

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

In 2013, Duke Energy Florida, LLC (DEF) announced its decision to retire its nuclear plant, Crystal River Unit 3 (CR3), in Citrus County, Florida. The retirement of CR3 was the subject of two settlement agreements. The first settlement agreement, reached in 2012, was a global settlement that addressed several issues, including issues related to a potential CR3 retirement.[1] The second settlement agreement, the Revised and Restated Stipulation and Settlement Agreement (RRSSA), reached in 2013, replaced and supplanted the 2012 settlement agreement.[2]

[1]Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, in Docket No. 120022-EI, *In re: Petition for limited proceeding to approve stipulation and settlement agreement by Progress Energy Florida, Inc.*
[2]Order No. PSC-13-0598-FOF-EI, issued November 12, 2013, in Docket No. 130208-EI, *In re: Petition for limited proceeding to approve revised and restated stipulation and settlement agreement by Duke Energy Florida, Inc. d/b/a Duke Energy.*

The parties to the RRSSA were DEF, the Office of Public Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), the Florida Retail Federation (FRF), and White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate (PCS Phosphate).

The RRSSA contemplated that DEF would recover through increased base rate charges the combined costs of two items associated with the retirement of CR3, the projected Dry Cask Storage (DCS) facility costs and the CR3 Regulatory Asset. Subsequent to approval of the RRSSA, the Commission approved two amendments.[3] Collectively, these amendments allowed for securitization of the CR3 Regulatory Asset, leaving only the DCS facility costs to be recovered through base rates.

On June 15, 2016, DEF filed a petition for approval of a Third Stipulation to Amend the RRSSA (Third RRSSA Amendment). All parties to the RRSSA, including DEF, OPC, FIPUG, FRF, and PCS Phosphate, are signatories to the Third RRSSA Amendment.

The Commission has jurisdiction pursuant to Sections 366.04 and 366.05, Florida Statutes (F.S.).

[3]Order No. PSC-15-0465-S-EI, issued October 14, 2015, in Docket Nos. 150148-EI, *In re: Petition for approval to include in base rates the revenue requirement for the CR3 regulatory asset, by Duke Energy Florida, Inc.* and 150171-EI, *In re: Petition for issuance of nuclear asset-recovery financing order, by Duke Energy Florida, Inc. d/b/a Duke Energy,* and
Order No. PSC-16-0138-FOF-EI, issued April 5, 2016, in Docket Nos. 150148-EI, *In re: Petition for approval to include in base rates the revenue requirement for the CR3 regulatory asset, by Duke Energy Florida, Inc.* and 150171-EI, *In re: Petition for issuance of nuclear asset-recovery financing order, by Duke Energy Florida, Inc. d/b/a Duke Energy.*

Discussion of Issues

Issue 1: Should DEF's petition to approve the Third Stipulation to Amend the RRSSA (Third RRSSA Amendment) be approved?

Recommendation: Yes. The Third RRSSA Amendment contained in Attachment A of this recommendation is in the public interest and should be approved. Recovery of the Dry Cask Storage (DCS) facility costs through the Capacity Cost Recovery Clause (CCR Clause) would allow annual review and adjustment, including potential credits from Department of Energy (DOE) awards. (Ellis)

Staff Analysis: In its petition for approval of the Third RRSSA Amendment, attached to this recommendation as Attachment A, DEF states that the parties requested changes would shift recovery of the DCS facility costs from increases in base rates to the CCR Clause. Prior to the modifications, DCS facility costs would have been recovered through uniform percentage increases in demand and energy rates, updated at least once every 4 years for a period up to 20 years, and with true-up through the CCR Clause.

Recognizing a previous Commission decision, the deferral of amortization for some costs associated with the DCS facility is included in the Third RRSSA Amendment.[4] The time period for amortization of capital costs associated with the DCS could also be modified through agreement of all parties and approval of the Commission. Cost allocation would remain based upon the methodology outlined in the RRSSA.

The Third RRSSA Amendment alters two paragraphs within the RRSSA to reflect the shift from base rates to the CCR Clause. Paragraph 5(e)(1) is amended to reflect the DCS facility costs are not to be combined with the CR3 Regulatory Asset, but rather are to be recovered through the CCR Clause. DEF states the parties determined that to preserve the intended cost recovery allocation of DCS facility costs, the Third RRSSA Amendment is necessary given the change in circumstances of the CR3 Regulatory Asset. As noted by DEF in response to staff's data request, the CR3 Regulatory Asset was securitized in June 2016 and is now held in a bankruptcy-remote facility and for all intents and purposes is isolated from further regulatory action. DEF notes it did not seek to add the DCS facility costs to this balance for securitization due to outstanding legal actions with the DOE stemming from its failure to remove spent nuclear fuel from the CR3 facility. If approved, DEF would also be required to credit the CCR Clause for any applicable award from the DOE. The Commission would have an opportunity to review DCS facility costs on an annual basis in the CCR Clause proceedings, including DOE awards.

Paragraph 21, which addresses those portions of the RRSSA that extend beyond December 2018, is amended to reflect that recovery of DCS facility costs through the CCR Clause may continue past 2018. Prior to the modifications, the recovery of DCS facility costs would have ended with the CR3 Regulatory Asset or approximately 20 years.

---

[4]Order No. PSC-15-0027-PAA-EI, issued January 7, 2015, in Docket No. 140113-EI, *In re: Petition for approval to construct an independent spent fuel storage installation and an accounting order to defer amortization pending recovery from the Department of Energy, by Duke Energy Florida, Inc.*

Conclusion

Staff agrees that the Third RRSSA Amendment contained in Attachment A of this recommendation is in the public interest and should be approved. Recovery of the DCS facility costs through the CCR Clause would allow annual review and adjustment, including potential credits from DOE awards.

Issue 2: Should this docket be closed?

Recommendation: Yes. This docket should be closed upon issuance of a consummating order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. (Janjic)

Staff Analysis: This docket should be closed upon issuance of a consummating order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order.

Stipulation of Parties to amend RRSSA
(Third RRSSA Amendment)
Exhibit A to Petition

Exhibit A to Petition – Stipulation to Amend RRSSA

1. The signatories to the RRSSA agree to and approve the Third RRSSA Amendment, attached to this Stipulation as Exhibit 1. The signatories agree that the Third RRSSA Amendment contains changes to allow the recovery of the approved, prudent Dry Cask Storage costs through the Capacity Cost Recovery Clause. The signatories, by executing this Stipulation, agree that paragraph 22 of the RRSSA, which requires that "no provision may be changed or altered without the consent of each signatory Party in a written document duly executed by all Parties to this Revised and Restated Settlement Agreement" is fully satisfied.
2. Except as set forth in the Third RRSSA Amendment attached as Exhibit 1 to this Stipulation, the Parties do not intend to affect the intent, or the provisions, of the RRSSA.
3. This Stipulation may be executed in counterpart originals, and a facsimile or PDF email of any original signature shall be deemed an original.

In Witness Whereof, the signatories to the RRSSA evidence their acceptance and agreement with the provisions of this Stipulation and the Third RRSSA Amendment by their signatures below.

Stipulation of Parties to amend RRSSA
(Third RRSSA Amendment)
Exhibit A to Petition

Duke Energy Florida, LLC

By: Dianne M. Triplett

Dianne M. Triplett
P.O. Box 14042
St. Petersburg, FL 33733

Stipulation of Parties to amend RRSSA
(Third RRSSA Amendment)
Exhibit A to Petition

Office of Public Counsel

By: _____

J. R. Kelly, Esq.
Charles Rehwinkel, Esq.
111 W. Madison St., Room 812
Tallahassee, FL 32399

Stipulation of Parties to amend RRSSA
(Third RRSSA Amendment)
Exhibit A to Petition

Florida Industrial Power Users Group

By: _____ 6/13/16

Jon C. Moyle, Esq.
Moyle Law Firm
118 North Gadsden Street
Tallahassee, FL 32301

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Stipulation of Parties to amend RRSSA
(Third RRSSA Amendment)
Exhibit A to Petition

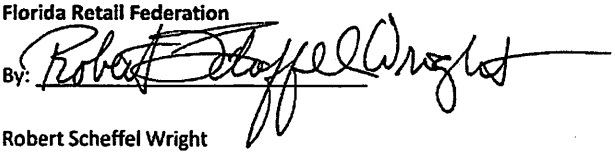
White Springs Agricultural Chemicals, Inc.

By: _____

James W. Brew, Esquire
Stone Mattheis Xenopoulos & Brew, PC
1025 Thomas Jefferson St., NW
Eighth Floor, West Tower
Washington, DC 20007

Stipulation of Parties to amend RRSSA
(Third RRSSA Amendment)
Exhibit A to Petition

Florida Retail Federation

By: 

Robert Scheffel Wright
John T. LaVia III
Garder, Bist, Bowden, Bush, Dee, LaVia & Wright, P.A.
1300 Thomaswood Drive
Tallahassee, FL 32308

Stipulation of Parties to amend RRSSA
(Third RRSSA Amendment)
Exhibit A to Petition

Exhibit 1 to Stipulation

Third RRSSA Amendment

Paragraph 5(e)(1) is revised to read:

"Prior to the date set out in paragraph 5e of this Revised and Restated Settlement Agreement, DEF shall be entitled to petition the Commission for approval of the reasonable and prudent projected DSC facility capital costs. The Intervenor Parties shall be entitled to fully participate in such a proceeding and do not waive any rights related to such participation or determination. ~~After a final decision by the Commission,~~ DEF shall be entitled to petition for ~~add~~ inclusion of the ~~Commission determined~~ projected total (retail jurisdictional) value of the reasonable and prudent DCS facility capital costs in the Capacity Cost Recovery Clause ~~to the CR3 Regulatory Asset~~ for recovery consistent with the revenue requirement calculation template in Exhibit 10 to the Revised and Restated Settlement Agreement subject to the amortization deferral approved in Order No. PSC-15-0027-PAA-EI, and shall be allocated to rate classes annually at the percentages that would have been calculated under the methodology described in the first sentence of Paragraph 5g. ~~and the base rate increase methodology in paragraphs 5g and 5h~~. The DCS facility capital costs shall not be recovered before the start of the recovery of the CR3 Regulatory Asset. The actual amounts recovered through the Capacity Cost Recovery Clause shall be subject to the clause true-up, review, audit, and approval processes, and. ~~When the DCS facility capital costs become final, DEF shall be entitled to petition the Commission for approval of the final DCS facility capital costs. T~~the Intervenor Parties shall be entitled to fully participate in such ~~a~~ proceedings, for example and without limitation, to challenge the reasonableness and prudence of DEF's claimed DCS facility capital costs, and do not waive any rights related to such participation or determination. The Parties expressly agree that any proceeding to recover such costs associated with this paragraph of the Revised and Restated Settlement Agreement shall not be a vehicle for a "rate case" type inquiry concerning the expenses, investment, or financial results of operations of the Company and shall not apply any form of earnings test or measure or consider previous or current base rate earnings or level of cost of removal reserve. DEF shall credit the Capacity Cost Recovery Clause with the retail portion of all applicable DOE awards when they are received ~~After a final decision by the Commission, DEF shall adjust the CR3 Regulatory Asset to true-up for the final Commission determined total (retail jurisdictional) value of the DCS facility capital costs~~, and shall amortize the adjusted final DCS facility capital cost balance ~~CR3 Regulatory Asset~~ over the recovery period set forth in paragraph 5g, unless another recovery period is agreed to by all Parties. ~~These base rates shall be subject to a true up as provided in paragraph 5g~~; and"

The second sentence of Paragraph 21 is revised to read:

Stipulation of Parties to amend RRSSA
(Third RRSSA Amendment)
Exhibit A to Petition

"In addition, the Parties agree that the base rate increases or charges that, pursuant to the terms of this Revised and Restated Settlement Agreement, extend beyond the last billing cycle for December 2018 and survive the expiration of the term or termination of this Revised and Restated Settlement Agreement, specifically include, without limitation, (A) the recovery of the CR3 Regulatory Asset through either (1) the last billing cycle for the 240th month from inception of the recovery of the CR3 Regulatory Asset or (2) in the event that the nuclear asset-recovery costs are to be recovered through the issuance of nuclear asset-recovery bonds, until the nuclear asset-recovery bonds have been paid in full and the Commission-approved financing costs have been recovered in full, and for such a period consistent with the proviso in paragraph 5g of this Revised and Restated Settlement Agreement (as amended); (B) the potential recovery of additional funds to fund the CR3 Nuclear Decommissioning Trust pursuant to paragraph 7b of this Revised and Restated Settlement Agreement; (C) the potential recovery of the CRS net book value pursuant to paragraph 8 of this Revised and Restated Settlement Agreement; ~~and~~ (D) the recovery of the LNP and EPU costs through the time periods established by this Revised and Restated Settlement Agreement and Section 366.93(6), F.S., and Commission Rule 25-6.0423(6), F.A.C.; and (E) the recovery of the DCS facility capital costs through the Capacity Cost Recovery Clause, as reflected in the amended paragraph 5(e)(1) of this Revised and Restated Settlement Agreement."

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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: August 31, 2016

TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk

FROM: Melinda H. Watts, Engineering Specialist, Division of Engineering

RE: Docket No. 160095-SU - Application for amendment of Certificate No. 164-S to extend territory in Duval County by Commercial Utilities/ A Division of Grace & Company, Inc. – Revised Recommendation.

Attached for filing is the revised recommendation in the above-named docket. This recommendation was deferred from the August 9, 2016 agenda and is to be heard at the September 13, 2016 agenda. The revision consists of replacing pages 1 through 5 of Attachment A in their entirety, as numerous inconsistencies were found in the composite territory description submitted by the Utility. The Utility has since filed a corrected composite territory description. The last page of Attachment A, page 6 of 6, has not been changed.

EXE Approval _____

MHW:tj

Attachment

Revised 08/31/2016

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: July 28, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (M. Watts, Knoblauch)
Division of Economics (Johnson)
Office of the General Counsel (Leathers)

RE: Docket No. 160095-SU – Application for amendment of Certificate No. 164-S to extend territory in Duval County by Commercial Utilities/A Division of Grace & Company, Inc.

AGENDA: 08/09/16 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On April 21, 2016, Commercial Utilities/A Division of Grace & Company, Inc. (Commercial Utilities or Utility) filed an application with the Florida Public Service Commission (Commission) to amend Certificate No. 164-S to add territory in Duval County. The Utility plans to extend its service territory in order to provide wastewater service to the Church's Chicken Restaurant and Krystal Restaurant at 5870 and 5814 Normandy Boulevard, respectively, in Jacksonville, Florida.

The Utility was originally granted water and wastewater certificates in 1976.[1] The Utility's water certificate was canceled in 1997,[2] and the wastewater territory was amended in 2011 to add six additional parcels.[3] The Commission has jurisdiction pursuant to Section 367.045, Florida Statutes (F.S).

[1]Order No. 6704, issued on June 4, 1975, in Docket Nos. 74787-W and 74788-S, *In re: Application of Grace & Company, Inc., for a certificate to operate an existing water and sewer system in Duval County, Florida.*
[2]Order No. PSC-97-0094-FOF-WU, issued on January 27, 1997, in Docket No. 961268-WU, *In re: Request for change in regulatory status and cancellation of Certificate No. 219-W in Duval County by Commercial Utilities, Division of Grace and Company, Inc.*
[3]Order No. PSC-11-0254-FOF-SU, issued on June 13, 2011, in Docket No. 100398-SU, *In re: Application for amendment of Certificate No. 164-S to extend territory in Duval County by Commercial Utilities, Division of Grace and Company, Inc.*

Discussion of Issues

Issue 1: Should the Commission approve Commercial Utilities' application for amendment of Certificate No. 164-S to extend its wastewater territory in Duval County?

Recommendation: Yes. It is in the public interest to amend Certificate No. 164-S to include the territory as described in Attachment A, effective the date of the Commission's vote. The resultant order should serve as Commercial Utilities' 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. (M. Watts, Knoblauch, Johnson)

Staff Analysis: The Utility's application to amend its authorized service territory is in compliance with the governing statute, 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 Utility stated that it does not have its own treatment facilities, but purchases wastewater treatment capacity from the Jacksonville Electric Authority Wastewater Treatment System (JEA). Adequate service territory maps and territory descriptions have also been provided.

The proposed additional service territory is intended to serve two restaurants on Normandy Boulevard, adjacent to the Utility's existing service area. The City of Jacksonville Environmental and Compliance Department stated in a November 30, 2015 letter to the Utility that the restaurants had experienced operational deficiencies with the current system providing wastewater treatment services to them, a wastewater package plant operated by an adjacent property owner. The letter also stated that the proposed connections to Commercial Utilities' wastewater treatment system would help eliminate future potential wastewater violations in the area, and it, therefore, supports the Utility's application to expand its territory to serve these two properties. Additionally, on December 14, 2015, JEA submitted a letter to the Utility echoing the City of Jacksonville's concerns, and stating it did not object to the Utility's application to expand its territory to serve these customers.

The Utility was granted a rate increase in 2011[4] and at that time, the Commission found the overall quality of service of Commercial Utilities 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 2015 Annual Report and is current with the payment of its 2015 Regulatory Assessment Fees.

The Utility has no approved service availability policy or charges. However, a developer agreement was submitted with the amendment application indicating that the customers in the new service area will install and donate to the Utility, the collection system needed to connect

[4]Order No. PSC-11-0138-PAA-SU, issued February 28, 2011, in Docket No. 100236-SU, *In re: Application for staff-assisted rate case in Duval County by Commercial Utilities, Division of Grace & Co., Inc.*

the customers to the Utility's existing collection system, consistent with Rules 25-30.580 and 25-30.585, F.A.C.

The Utility stated in its application that its collection system is adequately sized to accommodate the additional wastewater flows generated by Krystal Restaurant and Church's Chicken Restaurant. Also, with the additional flows from the restaurants, the Utility's wastewater flows to the JEA treatment facility will remain within the limits set by the Utility's contract/agreement with JEA.

According to the application, the provision of wastewater services in the proposed service territory is consistent with the City of Jacksonville 2030 Comprehensive Plan, and there are no outstanding Consent Orders or Notices of Violation from the Florida Department of Environmental Protection. Based on the foregoing analysis, staff recommends that Commercial Utilities 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. 164-S to include the territory as described in Attachment A, effective the date of the Commission's vote. The resultant order should serve as Commercial Utilities' 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 tariffs until a change is authorized by the Commission in a subsequent proceeding.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, no further action will be necessary, and this docket should be closed upon issuance of the order. (Leathers)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, no further action will be necessary, and this docket should be closed upon issuance of the order.

COMMERCIAL UTILITIES, INC.
DUVAL COUNTY
WASTEWATER

TERRITORY TO BE ADDED:

PARCEL 1.

GENERALLY DESCRIBED AS KRYSTAL RESTAURANT, 5814 NORMANDY BLVD., JACKSONVILLE, FLA.;

THOSE LANDS DESCRIBED AS A PART OF SECTIONS 24 AND 25, TOWNSHIP 2 SOUTH, RANGE 25 EAST, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 24 AND RUN NORTH 0°43' EAST ALONG THE EASTERLY LINE OF SAID SECTION 24, 31.19 FEET TO THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED RUN SOUTH 72°27'20" WEST, 186.29 FEET; RUN THENCE NORTH 19°39'03" WEST, 182.0 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF NORMANDY BOULEVARD (A 100-FOOT RIGHT-OF-WAY AS NOW ESTABLISHED); RUN THENCE IN AN EASTERLY DIRECTION ALONG THE ARC OF A CURVE IN SAID SOUTHERLY RIGHT-OF-WAY LINE, SAID CURVE BEING CONCAVE TO THE SOUTH AND HAVING A RADIUS OF 12,177.66 FEET, A CHORD DISTANCE OF 253.79 FEET TO A POINT WHERE SAID SOUTHERLY RIGHT-OF-WAY LINE INTERSECTS THE EASTERLY LINE OF SAID SECTION 24, THE BEARING OF THE AFORESAID MENTIONED CHORD BEING NORTH 71°54'57" EAST; RUN THENCE SOUTH 0°43' WEST ALONG SAID EASTERLY LINE OF SECTION 24, 194.04 FEET TO THE POINT OF BEGINNING; AND

PARCEL 2.

GENERALLY DESCRIBED AS CHURCH'S FRIED CHICKEN, 5870 NORMANDY BLVD., JACKSONVILLE, FLA.

THOSE LANDS DESCRIBED AS A TRACT OF LAND LYING IN SECTIONS 24 AND 25, TOWNSHIP 2 SOUTH, RANGE 25 EAST, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR POINT OF REFERENCE COMMENCE AT AN IRON PIPE AT THE SOUTHEAST CORNER OF SAID SECTION 24 AND RUN NORTH 0°43' EAST ALONG THE EAST LINE OF SAID SECTION 24, A DISTANCE OF 223.05 FEET TO AN IRON PIPE ON THE SOUTHERLY RIGHT-OF-WAY LINE OF NORMANDY BOULEVARD (BEING A 100 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED);

RUN THENCE SOUTH 71°22'10" WEST, A DISTANCE OF 429.22 FEET TO AN IRON PIPE SET ON SAID SOUTHERLY RIGHT-OF-WAY LINE OF NORMANDY BOULEVARD FOR THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED RUN IN A WESTERLY DIRECTION ALONG THE ARC OF A CURVE IN SAID SOUTHERLY RIGHT-OF-WAY LINE, SAID CURVE BEING CONCAVE TO THE SOUTH AND HAVING A RADIUS OF 12,177.66 FEET, A CHORD DISTANCE OF 160.0 FEET, THE BEARING OF THE AFOREMENTIONED CHORD BEING SOUTH 70°00'40" WEST;

RUN THENCE SOUTH 19°48'50" EAST, A DISTANCE OF 160.0 FEET;
RUN THENCE NORTH 70°00'4" EAST, A DISTANCE OF 160.0 FEET;

RUN THENCE NORTH 19°48'50" WEST, A DISTANCE OF 160.0 FEET TO THE POINT OF BEGINNING.

COMPOSITE WASTEWATER TERRITORY

A PORTION OF LAND LYING IN SECTION 24, TOWNSHIP 2 SOUTH, RANGE 25 EAST, AND IN SECTION 19, TOWNSHIP 2 SOUTH, RANGE 26 EAST, DUVAL COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE EASTERLY RIGHT OF WAY LINE OF LANE AVENUE WITH THE SOUTHERLY LIMITED ACCESS RIGHT OF WAY LINE OF INTERSTATE HIGHWAY 10; THENCE EASTERLY ALONG SAID SOUTHERLY LIMITED ACCESS RIGHT OF WAY LINE A DISTANCE OF 2700± FEET TO IT'S INTERSECTION WITH THE WESTERLY RIGHT OF WAY LINE OF ELLIS ROAD; THENCE SOUTHERLY ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 330± FEET TO IT'S INTERSECTION WITH THE NORTHERLY RIGHT OF WAY LINE OF RAMONA BOULEVARD; THENCE WESTERLY ALONG SAID NORTHERLY RIGHT OF WAY LINE A DISTANCE OF 762± FEET TO IT'S INTERSECTION WITH THE NORTHERLY PROLONGATION OF THE WESTERLY LINE OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS VOLUME 14431, PAGE 1628 AS RECORDED IN THE CURRENT PUBLIC RECORDS OF SAID COUNTY, FLORIDA; THENCE SOUTHERLY ALONG SAID NORTHERLY PROLONGATION AND ALONG THE WESTERLY LINE THEREOF, A DISTANCE OF 265± TO ITS INTERSECTION WITH THE NORTHERLY RIGHT OF WAY LINE OF AKRA AVENUE; THENCE WESTERLY ALONG SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 513± FEET TO IT'S INTERSECTION WITH THE WESTERLY LINE OF FIRST ADDITION TO BUENOS AIRES SUBDIVISION AS RECORDED IN PLAT BOOK 12 PAGE 45 OF SAID CURRENT PUBLIC RECORDS; THENCE SOUTHERLY ALONG SAID WESTERLY LINE, A DISTANCE OF 468± TO THE SOUTHWEST CORNER OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS VOLUME 11600, PAGE 1075 OF SAID CURRENT PUBLIC RECORDS; THENCE WESTERLY, A DISTANCE OF 26± FEET TO IT'S INTERSECTION WITH THE NORTHERLY PROLONGATION OF THE WESTERLY LINE OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS VOLUME 3030, PAGE 743 OF SAID CURRENT

PUBLIC RECORDS; THENCE SOUTHERLY ALONG SAID NORTHERLY PROLONGATION AND ALONG THE WESTERLY LINE THEREOF, A DISTANCE OF 643± FEET TO THE SOUTHWEST CORNER THEREOF; THENCE EASTERLY ALONG THE SOUTHERLY LINE THEREOF AND THE EASTERLY PROLONGATION THEREOF, A DISTANCE OF 1299± FEET TO ITS INTERSECTION WITH THE WESTERLY RIGHT OF WAY LINE OF SAID ELLIS ROAD; THENCE SOUTHERLY ALONG THE WESTERLY RIGHT OF WAY LINE THEREOF, A DISTANCE OF 669± FEET TO IT'S INTERSECTION WITH THE NORTHERLY RIGHT OF WAY LINE OF NORMANDY BOULEVARD; THENCE SOUTHWESTERLY ALONG THE NORTHERLY RIGHT OF WAY LINE THEREOF BEING AN ARC OF A CURVE WITH A CHORD BEARING AND DISTANCE OF SOUTH 74° WEST, 2702± FEET TO IT'S INTERSECTION WITH THE EASTERLY RIGHT OF WAY LINE OF LANE AVENUE; THENCE NORTHERLY ALONG THE EASTERLY RIGHT OF WAY LINE THEREOF, A DISTANCE OF 1349± FEET TO IT'S INTERSECTION WITH THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS VOLUME 7182, PAGE 796 OF SAID CURRENT PUBLIC RECORDS. THENCE NORTH 89°10'19" WEST ALONG SAID EASTERLY PROLONGATION AND ALONG THE SOUTHERLY LINE THEREOF AND THE SOUTHERLY LINE OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS VOLUME 10274, PAGE 2132 OF SAID CURRENT PUBLIC RECORDS, A DISTANCE OF 379± FEET TO THE SOUTHWEST CORNER THEREOF; THENCE NORTHERLY ALONG THE WESTERLY LINE THEREOF, A DISTANCE OF 105± FEET TO THE NORTHWEST CORNER THEREOF; THENCE WESTERLY ALONG THE NORTHERLY LINE OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS VOLUME 9256, PAGE 1 OF SAID CURRENT PUBLIC RECORDS, A DISTANCE OF 346± FEET TO IT'S INTERSECTION WITH THE EASTERLY RIGHT OF WAY LINE OF GRANDVILLE ROAD; THENCE NORTHEASTERLY ALONG THE EASTERLY RIGHT OF WAY LINE THEREOF, A DISTANCE OF 370± FEET TO IT'S POINT OF TERMINATION; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF THOSE LANDS DESCRIBED OFFICIAL RECORDS VOLUME 3927, PAGE 349 OF SAID CURRENT PUBLIC RECORDS, A DISTANCE OF 557± FEET TO THE SOUTHWEST CORNER THEREOF; THENCE NORTH 04° EAST ALONG THE WESTERLY LINE THEREOF, A DISTANCE OF 657± FEET TO THE SOUTHWEST CORNER OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS VOLUME 11263, PAGE 514 OF SAID CURRENT PUBLIC RECORDS; THENCE EASTERLY ALONG THE SOUTHERLY LINE THEREOF, A DISTANCE OF 380± FEET TO THE SOUTHEAST CORNER THEREOF; THENCE NORTHERLY ALONG THE EASTERLY LINE THEREOF AND THE NORTHERLY PROLONGATION THEREOF, A DISTANCE OF 409± FEET TO IT'S INTERSECTION WITH THE NORTHERLY RIGHT OF WAY LINE OF SAID RAMONA BOULEVARD; THENCE WESTERLY ALONG THE NORTHERLY RIGHT OF WAY LINE THEREOF, A DISTANCE OF 116± FEET TO THE SOUTHWEST CORNER OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS VOLUME 10174, PAGE 2280 OF SAID CURRENT PUBLIC RECORDS; THENCE NORTHERLY ALONG THE WESTERLY LINE THEREOF, A DISTANCE OF 329± FEET TO IT'S INTERSECTION WITH SAID SOUTHERLY LIMITED ACCESS RIGHT OF WAY LINE OF INTERSTATE HIGHWAY 10; THENCE EASTERLY ALONG SAID SOUTHERLY LIMITED ACCESS RIGHT OF WAY LINE, A DISTENCE OF 900± FEET TO IT'S INTERSECTION WITH THE WESTERLY RIGHT OF WAY LINE OF SAID LANE

AVENUE; THENCE NORTHERLY ALONG THE WESTERLY RIGHT OF WAY LINE THEREOF, A DISTANCE OF 823± FEET TO ITS INTERSECTION WITH THE NORTHERLY LIMITED ACCESS RIGHT OF WAY LINE OF SAID INTERSTATE HIGHWAY 10; THENCE SOUTHWESTERLY ALONG SAID LIMITED ACCESS RIGHT OF WAY LINE, A DISTANCE OF 106± FEET TO IT'S INTERSECTION WITH THE SOUTHERLY LINE OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS VOLUME 12059, PAGE 1065 OF SAID CURRENT PUBLIC RECORDS; THENCE WESTERLY ALONG THE SOUTHERLY LINE THEREOF AND THE SOUTHERLY LINE OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS VOLUME 12067, PAGE 2131 OF SAID CURRENT PUBLIC RECORDS, A DISTANCE OF 477± FEET TO A POINT IN THE SOUTHERLY LINE OF LAST SAID LANDS; THENCE NORTHERLY, A DISTANCE OF 441± FEET TO ITS INTERSECTION WITH THE NORTHERLY RIGHT OF WAY LINE OF STUART AVENUE; THENCE WESTERLY ALONG THE NORTHERLY RIGHT OF WAY LINE THEREOF, A DISTANCE OF 20± FEET TO THE SOUTHWEST CORNER OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS VOLUME 13770, PAGE 1003 OF SAID CURRENT PUBLIC RECORDS; THENCE NORTHERLY ALONG THE WESTERLY LINE THEREOF ALSO BEING THE EASTERLY RIGHT OF WAY LINE OF FOX STREET, A DISTANCE OF 294± FEET TO A NORTHWEST CORNER THEREOF; THENCE EASTERLY ALONG THE NORTHERLY LINE THEREOF AND ALONG THE EASTERLY PROLONGATION THEREOF, A DISTANCE OF 645± FEET TO ITS INTERSECTION WITH THE EASTERLY RIGHT OF WAY LINE OF SAID LANE AVENUE; THENCE SOUTHERLY ALONG THE EASTERLY RIGHT OF WAY LINE THEREOF, A DISTANCE OF 343± FEET TO IT'S INTERSECTION WITH THE SOUTHERLY RIGHT OF WAY LINE OF SAID STUART AVENUE; THENCE EASTERLY ALONG THE SOUTHERLY RIGHT OF WAY LINE THEREOF, A DISTANCE OF 283± FEET TO THE NORTHEAST CORNER OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS VOLUME 10281, PAGE 77 OF SAID CURRENT PUBLIC RECORDS; THENCE SOUTHERLY ALONG THE EASTERLY LINE THEREOF, A DISTANCE OF 305± FEET TO THE SOUTHEASTERLY CORNER THEREOF; THENCE WESTERLY ALONG THE SOUTHERLY LINE THEREOF, A DISTANCE OF 282± FEET TO IT'S INTERSECTION WITH THE SAID EASTERLY RIGHT OF WAY LINE OF SAID LANE AVE; THENCE SOUTHERLY ALONG THE EASTERLY RIGHT OF WAY LINE THEREOF, A DISTANCE OF 824± FEET TO THE POINT OF BEGINNING.

TOGETHER WITH

PART OF SECTION 24 AND 25, TOWNSHIP 2 SOUTH, RANGE 25 EAST, AND PART OF SECTION 19, TOWNSHIP 2 SOUTH, RANGE 26 EAST, DUVAL COUNTY, FLORIDA BEING DESCRIBED AS FOLLOWS: BEGIN AT THE SOUTHWEST CORNER OF SAID SECTION 19; THENCE NORTH ON THE WEST LINE OF SAID SECTION 19 A DISTANCE OF 31.19 FEET TO THE SOUTHEAST CORNER OF LANDS DESCRIBED IN OFFICIAL RECORDS 16242, PAGE 1677 OF THE PUBLIC RECORDS OF SAID DUVAL COUNTY; THENCE SOUTH 72°27'20" WEST ON THE SOUTH LINE OF SAID LANDS 186.29 FEET TO THE SOUTHWEST CORNER OF SAID LANDS; THENCE NORTH19°39'03" WEST ON THE WEST LINE OF SAID LANDS 182.0 FEET TO THE NORTHWEST CORNER OF SAID LANDS AND THE SOUTH RIGHT OF WAY LINE OF

NORMANDY BOULEVARD; SAID POINT LYING ON A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 12,177.66 FEET; THENCE NORTHEASTERLY ON THE NORTH LINE OF LANDS AND THE NORTH LINE OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS 8483, PAGE 928, PARCEL 1 AND SAID SOUTH RIGHT OF WAY LINE AN ARC DISTANCE OF 667.22 FEET AND A CHORD OF 667.14 FEET TO ITS INTERSECTION WITH THE NORTH LINE OF THOSE CERTAIN LANDS DESCRIBED IN DEED, RECORDED IN OFFICIAL RECORD VOLUME 122, PAGE 402 OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY; THENCE NORTH 88°32'02" EAST ALONG THE NORTH LINE OF SAID LAST MENTIONED LANDS 72.25 FEET TO THE NORTHEAST CORNER OF LAST SAID LANDS ; THENCE SOUTH ON THE EAST LINE OF SAID LANDS 333.48 FEET TO THE SOUTH LINE OF SAID SECTION 19; THENCE WEST ON SAID SOUTH LINE 467.07 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THOSE LANDS DESCRIBED AS A TRACT OF LAND LYING IN SECTIONS 24 AND 25, TOWNSHIP 2 SOUTH, RANGE 25 EAST, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT AN IRON PIPE AT THE SOUTHEAST CORNER OF SAID SECTION 24 AND RUN NORTH 0°43' EAST ALONG THE EAST LINE OF SAID SECTION 24, A DISTANCE OF 223.05 FEET TO AN IRON PIPE ON THE SOUTHERLY RIGHT OF WAY LINE OF NORMANDY BOULEVARD (BEING A 100 FOOT RIGHT OF WAY AS NOW ESTABLISHED); RUN THENCE SOUTH 71°22'10" WEST, A DISTANCE OF 429.22 FEET. TO AN IRON PIPE SET ON SAID SOUTHERLY RIGHT OF WAY LINE OF NORMANDY BOULEVARD FOR THE POINT OF BEGINNING. FROM THE POINT OF BEGINNING THUS DESCRIBED RUN IN A WESTERLY DIRECTION ALONG THE ARC OF A CURVE IN SAID SOUTHERLY RIGHT OF WAY LINE, SAID CURVE BEING CONCAVE TO THE SOUTH AND HAVING A RADIUS OF 12,177.66 FEET, A CHORD DISTANCE OF 160.0 FEET, THE BEARING OF THE AFOREMENTIONED CHORD BEING SOUTH 70°00'40" WEST; RUN THENCE SOUTH 19° 48'50" EAST, A DISTANCE OF 160.0 FEET; RUN THENCE NORTH 70°00'40" EAST, A DISTANCE OF 160.0 FEET; RUN THENCE NORTH 19°48'50" WEST, A DISTANCE OF 160.0 FEET TO THE POINT OF BEGINNING.

FLORIDA PUBLIC SERVICE COMMISSION

authorizes

Commercial Utilities, Inc.

pursuant to
Certificate Number 164-S

to provide water service in Duval 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
6704	06/05/1975	74787-W, 74788-S	Original Certificate
PSC-11-0138-PAA-SU	02/28/2011	100398-SU	Amendment
*	*	160095-SU	Amendment

*** Order Numbers and dates to be provided at time of issuance**

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: August 31, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Ollila)
Division of Engineering (Wooten)
Office of the General Counsel (Janjic)

RE: Docket No. 160071-EI – Petition for approval of 2016 revisions to underground residential and commercial differential tariffs, by Florida Power & Light Company.

AGENDA: 09/13/16 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Patronis

CRITICAL DATES: 12/01/16 (8-Month Effective Date)

SPECIAL INSTRUCTIONS: None

Case Background

On April 1, 2016, Florida Power & Light Company (FPL) filed a petition for approval of revisions to its underground residential differential (URD) and underground commercial differential (UCD) tariffs. The URD and UCD tariffs apply to new residential and commercial developments and represent the additional costs FPL incurs to provide underground distribution service in place of overhead service. The proposed URD tariffs are contained in Attachment 1 to the recommendation. FPL's current charges were approved in Order No. PSC-14-0467-TRF-EI (2014 order).[1]

[1] Order No. PSC-14-0467-TRF-EI, issued August 29, 2014, in Docket No. 140066-EI, *In re: Petition for approval of* dment to underground residential and commercial differential tariffs, by Florida Power & Light Company.

The Commission suspended FPL's proposed tariffs in Order No. PSC-16-0208-PCO-EI.[2] FPL responded to staff's first data request on May 10, 2016, and to staff's second data request on June 1, 2016. On July 29, 2016, FPL filed an amended petition and revised tariff pages. The amended petition removed a new provision FPL proposed in its original petition. The Commission has jurisdiction over this matter pursuant to Sections 366.03, 366.04, 366.05, and 366.06, Florida Statutes.

[2] Order No. PSC-16-0208-PCO-EI, issued May 23, 2016, in Docket No. 160071-EI, *In re: Petition for approval of 2016 revisions to underground residential and commercial differential tariffs, by Florida Power & Light Company.*

Discussion of Issues

Issue 1: Should the Commission approve FPL's proposed URD tariff and associated charges filed in the amended petition?

Recommendation: Yes. The Commission should approve FPL's proposed URD tariffs and associated charges filed in the amended petition, effective October 13, 2016. (Ollila, Wooten)

Staff Analysis: Rule 25-6.078, Florida Administrative Code (F.A.C.), defines investor-owned utilities' (IOU) responsibilities for filing updated URD tariffs. IOUs are required to file supporting data and analyses for URD tariffs at least once every three years. In October of each year, IOUs are required to file an updated cost differential using current labor and material costs. If the October cost differential varies from the Commission-approved differential by plus or minus 10 percent or more, then the IOU must file revised tariffs, supporting data and analyses the following April even if it has been less than three years. In its October 2015 filing, FPL reported that the updated cost differential, when compared to the 2014 order, decreased by more than 10 percent; therefore, FPL filed the instant petition.

The URD tariffs provide standard charges for underground service in new residential subdivisions and represent the additional costs, if any, the utility incurs to provide underground service in place of standard overhead service. The cost of standard overhead construction is recovered through base rates from all ratepayers. In lieu of overhead construction, customers have the option of requesting underground facilities. Any additional cost is paid by the customer as contribution-in-aid-of construction (CIAC). Typically, the URD customer is the developer of a subdivision.

Traditionally, three standard model subdivision designs have been the basis upon which each IOU submits URD tariff changes for Commission approval: low density, high density, and a high density subdivision where dwelling units take service at ganged meter pedestals (groups of meters at the same physical location). Examples of this last subdivision type include mobile home and recreational vehicle parks. While actual construction may differ from the model subdivisions, the model subdivisions are designed to reflect average overhead and underground subdivisions.

Table 1-1 shows the current and proposed per service lateral URD differential charges for the low and high density subdivisions. The current and proposed URD differential for a ganged meter installation is $0. As shown in Table 1-1, the proposed URD differentials show a decrease for all subdivisions. The primary reason for the decrease in the URD differentials are larger increases in overhead labor and material costs than in underground labor and material costs.

Table 1-1
Comparison of Differential Per Service Lateral

Types of Subdivision	Number of Service Laterals in Subdivision	Current URD Differential	Proposed URD Differential
Low Density	Tier 1 – 200 or more	$165.99	$0
	Tier 2 – 85 – 199	$415.99	$183.35
	Tier 3 – less than 85	$498.99	$266.35
High Density	Tier 1 – 300 or more	$0	$0
	Tier 2 – 100-299	$105.71	$0
	Tier 3 – less than 100	$188.71	$57.97
Ganged Meter	All Tiers	$0	$0

Source: 2014 order and FPL's 2016 filing

The calculations of the proposed URD charges include (1) updated labor and material costs and associated loading factors, and (2) operational costs. The costs are discussed below.

Labor and Material Costs

The installation costs of both underground and overhead facilities include the labor and material costs to provide primary, secondary, and service distribution lines as well as transformers. The costs of poles are specific to overhead service while the costs of trenching and backfilling are specific to underground service. Current URD charges are based on 2014 data and the proposed charges are based on 2016 data.

The cost of labor increased for overhead activities at approximately twice the rate it increased for underground activities, resulting in a decrease in the differential. FPL explained in response to staff's first data request that it uses a labor rate that reflects both FPL and contractor labor rates for all overhead and underground activities, as there are no overhead or underground activities that are exclusively performed by FPL or its contractors. Contractual agreements determine the labor rates for both FPL employees and contractors. The overall overhead labor cost increase is primarily the result of increased overhead contractor labor rates, which have increased more than contractor underground labor rates.

Material costs increased for overhead and decreased for underground from 2014 to 2016, further decreasing the differential. FPL explained in response to staff's first data request that FPL's 2016 overhead designs incorporated for the first time automated lateral switches or reclosers. These devices automatically mitigate the effects of a lateral interruption, including clearing temporary faults, isolating the impact of an outage, and avoiding field visits to replace blown fuses. Without the reclosers, 2016 overhead material costs would have been less than 2014 costs. According to FPL, the decline in underground material costs is primarily due to prices obtained through competitive bidding and favorable automatic price adjustments from commodity price changes, for example, resin in PVC conduit.

FPL's proposed URD tariff also includes updated charges to reflect current labor and material costs for additional customer-requested equipment such as feeder mains or switch packages and

credits if a customer performs trenching or installs equipment, such as a splice box. The proposed URD tariff also updates charges for installing underground service laterals from overhead systems, and for the replacement of existing overhead and underground services with underground service laterals.

Loading Factors

The stores loading factor is applied to material costs and declined from 9.3 percent in 2014 to 5.44 percent in this filing. The rate is a calculation, which divides year-to-date stores expense by the year-to-date total cost of inventory. FPL explained in its response to staff's first data request that the decrease is mainly due to an increased level of inventory because of a higher level of construction activity. The 2016 engineering factor is applied to labor and material. It incorporates both engineering and corporate overhead, which were shown separately in the 2014 filing. The combined factor declined from 27.8 percent in 2014 to 26.9 percent in 2016.

Table 1-2 provides the labor and material differential or pre-operational costs. As Table 1-2 shows, in 2016, only the low density cost differential is a positive number ($141.35), indicating that underground labor/material costs are higher than overhead labor/material costs for the low density subdivision.

Table 1-2
Labor and Material Costs (Pre-operational Costs)

Low Density	2014 Costs	2016 Costs	Difference
Underground labor/material costs	$2,325.60	$2,413.84	$88.24
Overhead labor/material costs	$1,951.61	$2,272.49	$320.88
Per service lateral differential	$373.99	$141.35	($232.64)
High Density			
Underground labor/material costs	$1,590.63	$1,640.45	$49.82
Overhead labor/material costs	$1,510.92	$1,691.48	$180.56
Per service lateral differential	$79.71	($51.03)	($130.74)
Ganged Meter			
Underground labor/material costs	$1,052.50	$1,051.82	($0.68)
Overhead labor/material costs	$1,213.77	$1,344.17	$130.40
Per service lateral differential	($161.27)	($292.35)	($131.08)

Source: 2014 Order and FPL's 2016 filing

Operational Costs

Rule 25-6.078, F.A.C., requires that the differences in net present value of operational costs between overhead and underground systems, including average historical storm restoration costs over the life of the facilities, be included in the URD charge. The non-storm operational costs represent the cost differential between maintaining and operating an underground versus an overhead system over the life of the facilities. The storm cost component represents storm restoration costs avoided when an area is undergrounded, thereby reducing the cost to restore an

overhead system. The avoided storm cost is subtracted from pre-operational and non-storm operational costs, thus reducing the URD differential charge.

FPL's operational costs, last updated for the 2014 filing, are a five-year average, which according to FPL, mitigate any significant future volatility. FPL explained that average changes in the non-storm and storm operational cost per lot were approximately 2 percent and 1 percent per year, respectively, from 2007-2014.

Table 1-3 presents the pre-operational, non-storm operational, and the avoided storm restoration cost differentials between overhead and underground systems. The proposed differential is $0 when the calculation results in a negative number.

Table 1-3
Components of the URD Charges

Type of Subdivision	Number of Service Laterals in Subdivision	Pre-operational Costs (A)	Non-storm operational costs (B)	Avoided Storm costs (C)	Proposed URD Differentials (A)+(B)+(C)
Low Density	Tier 1 – 200 or more	$141.35	$208	($416)	$0
	Tier 2 – 85 – 199		$208	($166)	$183.35
	Tier 3 – less than 85		$208	($83)	$266.35
High Density	Tier 1 – 300 or more	($51.03)	$192	($416)	$0
	Tier 2 – 100 – 299		$192	($166)	$0
	Tier 3 – less than 100		$192	($83)	$57.97
Ganged Meter	Tier 1 – 300 or more	($292.35)	$192	($416)	$0
	Tier 2 – 100 – 299		$192	($166)	$0
	Tier 3 – less than 100		$192	($83)	$0

Source: FPL's 2016 Filing

Conclusion

Staff has reviewed FPL's proposed URD tariffs and associated charges, its accompanying work papers, and its responses to staff's data requests. Staff believes the proposed URD tariffs and associated charges are reasonable and recommends approval. FPL requested that the tariffs be made effective 30 days after the Commission vote. Staff recommends that the Commission approve FPL's proposed URD tariffs and associated charges filed in the amended petition, effective October 13, 2016.

Issue 2: Should the Commission approve FPL's proposed UCD tariffs and associated charges filed in the amended petition?

Recommendation: Yes. The Commission should approve FPL's proposed UCD tariffs and associated charges filed in the amended petition, effective October 13, 2016. (Ollila, Wooten)

Staff Analysis: Utilities are not required to file UCD tariffs, as they are not governed by Rule 25-6.078, F.A.C.; however, FPL has chosen to include its proposed UCD tariffs in the instant petition. Although not required to do so, FPL has incorporated the cost effects of hardening its overhead system in the calculation of the UCD charges.

The UCD charges represent additional costs FPL incurs to provide commercial customers with underground distribution service in place of overhead service. Generally, the UCD charges are tailored to specific equipment and material that are utilized to provide underground service to a single or limited number of commercial buildings in distinct and widely varying circumstances.

The UCD tariffs contain charges for commercial underground distribution facilities such as laterals, risers, and hand-holes. In addition, the UCD tariffs provide for credits that apply if the applicant provides trenching and backfilling. The UCD charges are derived from cost estimates of underground commercial facilities and their equivalent overhead designs. The proposed charges are based on FPL's standard design, estimating practices, and costs as of 2016.

Staff believes the filing of the tariffs is reasonable and promotes transparency and efficiency and reduces controversy regarding the UCD charges. FPL requested that the tariffs be made effective 30 days after the Commission vote. Staff recommends that the Commission approve FPL's proposed UCD tariffs and associated charges filed in the amended petition, effective October 13, 2016.

Issue 3: Should this docket be closed?

Recommendation: If a protest is filed within 21 days of the issuance of the order, this tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order. (Janjic)

Staff Analysis: If a protest is filed within 21 days of the issuance of the order, this tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.

FLORIDA POWER & LIGHT COMPANY

Fourteenth Revised Sheet No. 6.080
Cancels Thirteenth Revised Sheet No. 6.080

INSTALLATION OF UNDERGROUND ELECTRIC DISTRIBUTION FACILITIES TO SERVE RESIDENTIAL CUSTOMERS

SECTION 10.1 DEFINITIONS

The following words and terms, when used in Section 10, shall have the meaning indicated:

APPLICANT - Any person, partnership, association, corporation, or governmental agency controlling or responsible for the development of a new subdivision or dwelling unit who applies for the underground installation of distribution facilities.

BACKBONE - The distribution system excluding feeder and that portion of the service lateral which is on the lot being served by that service lateral.

BUILDING - Any structure designed for residential occupancy, excluding a townhouse unit, which contains less than five individual dwelling units.

CABLE IN CONDUIT SYSTEM - Underground residential distribution systems where all underground primary, secondary, service and street light conductors are installed in direct buried conduit. Other facilities associated with cable in conduit, such as transformers, may be above ground.

COMMISSION - The Florida Public Service Commission.

COMPANY - The Florida Power & Light Company.

DISTRIBUTION SYSTEM - Electric service facilities consisting of primary and secondary conductors, service laterals, conduits, transformers, and necessary accessories and appurtenances for the furnishing of electric power at utilization voltage.

DWELLING UNIT – A single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation.

FEEDER MAIN - A three-phase primary installation, including switches, which serves as a source for primary laterals and loops through suitable overcurrent devices.

FINAL GRADE - The ultimate elevation of the ground, paved or unpaved, which will prevail in a subdivision or tract of land.

MOBILE HOME (TRAILER) - A vehicle or conveyance, permanently equipped to travel upon the public highways, that is used either temporarily or permanently as a residence or living quarters.

MULTIPLE-OCCUPANCY BUILDING - A structure erected and framed of component structural parts and designed to contain five or more individual dwelling units.

OVERHEAD SYSTEM - Distribution system consisting of primary, secondary and service conductors and aerial transformers supported by poles.

POINT OF DELIVERY - The point where the Company's wires or apparatus are connected to those of the Customer. See Section 10.2.11.

PRIMARY LATERAL - That part of the electric distribution system whose function is to conduct electricity at the primary level from the feeder main to the transformers. It usually consists of a single-phase conductor or insulated cable, with conduit, together with necessary accessory equipment for supporting, terminating and disconnecting from the primary mains by a fusable element.

SERVICE LATERAL - The entire length of underground service conductors and conduit between the distribution source, including any risers at a pole or other structure or from transformers, from which only one point of service will result, and the first point of connection to the Service Entrance Conductors in a terminal or meter box outside the building wall.

SERVICE ENTRANCE CONDUCTORS – The Customer's conductors from point of connection at the service drop or service lateral to the service equipment.

(Continued on Sheet No. 6.085)

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

(Continued from Sheet No. 6.090)

10.2.8.1 Credit for TUGs

If the Applicant installs the permanent electric service entrance such that FPL's service lateral can be subsequently installed and utilized to provide that building's construction service, the Applicant shall receive a credit in the amount of $60.00 per service lateral, subject to the following requirements:

a) TUGs must be inspected and approved by the local inspecting authority.
b) All service laterals within the subdivision must be installed as TUGs.
c) FPL must be able to install the service lateral, energize the service lateral, and set the meter to energize the load side of the meter can, all in a single trip. Subsequent visits other than routine maintenance or meter readings will void the credit.
d) Thereafter, acceptance and receipt of service by the Customer shall constitute certification that the Customer has met all inspection requirements, complied with all applicable codes and rules and, subject to section 2.7 Indemnity to Company, or section 2.71 Indemnity to Company – Governmental, FPL's General Rules and Regulations, the Customer releases, holds harmless and agrees to indemnify the Company from and against loss or liability in connection with the provision of electrical services to or through such Customer-owned electrical installations.
e) The Applicant shall be held responsible for all electric service used until the account is established in the succeeding occupant's name.

This credit applies only when FPL installs the service - it does not apply when the applicant installs the service conduits, or the service conduits and cable.

10.2.9. Location of Distribution Facilities

Underground distribution facilities will be located, as determined by the Company, to maximize their accessibility for maintenance and operation. The Applicant shall provide accessible locations for meters when the design of a dwelling unit or its appurtenances limits perpetual accessibility for reading, testing, or making necessary repairs and adjustments.

10.2.10. Special Conditions

The costs quoted in these rules are based on conditions which permit employment of rapid construction techniques. The Applicant shall be responsible for necessary additional hand digging expenses other than what is normally provided by the Company. The Applicant is responsible for clearing, compacting, boulder and large rock removal, stump removal, paving, and addressing other special conditions. Should paving, grass, landscaping or sprinkler systems be installed prior to the construction of the underground distribution facilities, the Applicant shall pay the added costs of trenching and backfilling and be responsible for restoration of property damaged to accommodate the installation of underground facilities.

10.2.11. Point of Delivery

The point of delivery shall be determined by the Company and will normally be at or near the part of the building nearest the point at which the secondary electric supply is available to the property. When a location for a point of delivery different from that designated by the Company is requested by the Applicant, and approved by the Company, the Applicant shall pay the estimated full cost of service lateral length, including labor and materials, required in excess of that which would have been needed to reach the Company's designated point of service. The additional cost per trench foot is $7.20. Where an existing trench is utilized, the additional cost per trench foot is $2.78. Where the Applicant provides the trenching, installs Company provided conduit according to Company specifications and backfilling, the cost per additional trench foot is $2.02. Any re-designation requested by the Applicant shall conform to good safety and construction practices as determined by the Company. Service laterals shall be installed, where possible, in a direct line to the point of delivery.

(Continued on Sheet No. 6.096)

Thirty-Sixth Revised Sheet No. 6.100
FLORIDA POWER & LIGHT COMPANY Cancels Thirty-Fifth Revised Sheet No. 6.100

SECTION 10.3 UNDERGROUND DISTRIBUTION FACILITIES FOR RESIDENTIAL SUBDIVISIONS AND DEVELOPMENTS

10.3.1. Availability

When requested by the Applicant, the Company will provide underground electric distribution facilities, other than for multiple occupancy buildings, in accordance with its standard practices in:

a) Recognized new residential subdivision of five or more building lots.
b) Tracts of land upon which five or more separate dwelling units are to be located.

For residential buildings containing five or more dwelling units, see SECTION 10.6 of these Rules.

10.3.2. Contribution by Applicant

a) The Applicant shall pay the Company the average differential cost for single phase residential underground distribution service based on the number of service laterals required or the number of dwelling units, as follows:

	Applicant's Contribution
1. Where density is 6.0 or more dwelling units per acre:	
1.1 Buildings that do not exceed four units, townhouses, and mobile homes – per service lateral.	
1. Subdivisions with 300 or more total service laterals	$ 0.00
2. Subdivisions from 100 to 299 total service laterals	$ 0.00
3. Subdivisions less than 100 total service laterals	$ 57.97
1.2 Mobile homes having Customer-owned services from meter center installed adjacent to the FPL primary trench route - per dwelling unit.	
1. Subdivisions with 300 or more total dwelling units	$ 0.00
2. Subdivisions from 100 to 299 total dwelling units	$ 0.00
3. Subdivisions less than 100 total dwelling units	$ 0.00
2. Where density is 0.5 or greater, but less than 6.0 dwelling units per acre:	
Buildings that do not exceed four units, townhouses, and mobile homes – per service lateral	
1. Subdivisions with 200 or more total service laterals	$ 0.00
2. Subdivisions from 85 to 199 total service laterals	$ 183.35
3. Subdivisions less than 85 total service laterals	$ 266.35

3. Where the density is less than 0.5 dwelling units per acre, or the Distribution System is of non-standard design, individual cost estimates will be used to determine the differential cost as specified in Paragraph 10.2.5.

Additional charges specified in Paragraphs 10.2.10 and 10.2.11 may also apply.

b) The above costs are based upon arrangements that will permit serving the local underground distribution system within the subdivision from overhead feeder mains. If feeder mains within the subdivision are deemed necessary by the Company to provide and/or maintain adequate service and are required by the Applicant or a governmental agency to be installed underground, the Applicant shall pay the Company the average differential cost between such underground feeder mains within the subdivision and equivalent overhead feeder mains, as follows:

	Applicant's Contribution
Cost per foot of feeder trench within the subdivision (excluding switches)	$9.02
Cost per switch package	$27,200.43

(Continued on Sheet No. 6.110)

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

FLORIDA POWER & LIGHT COMPANY

Thirty-Fifth Revised Sheet No. 6.110
Cancels Thirty-Fourth Revised Sheet No. 6.110

(Continued from Sheet No. 6.100)

c) Where primary laterals are needed to cross open areas such as golf courses, parks, other recreation areas and water retention areas, the Applicant shall pay the average differential costs for these facilities as follows:

Cost per foot of primary lateral trench within the subdivision

1) Single Phase - per foot	$0.71
2) Two Phase - per foot	$2.72
3) Three Phase - per foot	$4.38

d) For requests for service where underground facilities to the lot line are existing and a differential charge was previously paid for these facilities, the cost to install an underground service lateral to the meter is as follows:

Density less than 6.0 dwelling units per acre:	$348.83
Density 6.0 or greater dwelling units per acre:	$258.34

10.3.3. Contribution Adjustments

a) Credits will be allowed to the Applicant's contribution in Section 10.3.2.where, by mutual agreement, the Applicant provides all trenching and backfilling for the Company's distribution system, excluding feeder.

	Credit to Applicant's Contribution	
	Backbone	Service
1. Where density is 6.0 or more dwelling units per acre:		
1.1 Buildings that do not exceed four units, townhouses, and mobile homes - per service lateral.	$149.16	$156.59
1.2 Mobile homes having Customer-owned services from meter center installed adjacent to the FPL primary trench route - per dwelling unit.	$123.35	N/A
2. Where density is 0.5 or greater, but less than 6.0 dwelling units per acre:		
Buildings that do not exceed four units, townhouses, and mobile homes - per service lateral	$247.06	$219.22

b) Credits will be allowed to the Applicant's contribution in Section 10.3.2.where, by mutual agreement, the Applicant installs all Company-provided conduit excluding feeder per FPL instructions. This credit is:

	Backbone	Service
1. Where density is 6.0 or more dwelling units per acre:		
1.1 Buildings that do not exceed four units, townhouses, and mobile homes - per service lateral.	$62.07	$48.00

(Continued on Sheet No. 6.115)

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

FLORIDA POWER & LIGHT COMPANY

Twenty-Third Revised Sheet No. 6.115
Cancels Twenty-Second Revised Sheet No. 6.115

(Continued from Sheet No. 6.110)

	Credit to Applicant's Contribution	
	Backbone	Service
1.2 Mobile homes having Customer-owned services from meter center installed adjacent to the FPL primary trench route - per dwelling unit	$50.61	N/A
2. Where density is .5 or greater, but less than 6.0 dwelling units per acre, per service lateral.	$99.47	$58.80

c) Credits will be allowed to the Applicant's contribution in Section 10.3.2. where, by mutual agreement, the Applicant provides a portion of trenching and backfilling for the Company's facilities, per foot of trench – $3.48.

d) Credits will be allowed to the Applicant's contribution in section 10.3.2. where, by mutual agreement, the Applicant installs a portion of Company-provided PVC conduit, per FPL instructions (per foot of conduit): 2" PVC - $0.60; larger than 2" PVC - $0.84.

e) Credit will be allowed to the Applicant's contribution in section 10.3.2., where, by mutual agreement, the Applicant installs an FPL-provided feeder splice box, per FPL instructions, per box - $664.74.

f) Credit will be allowed to the Applicant's contribution in section 10.3.2., where by mutual agreement, the Applicant installs an FPL-provided primary splice box, per FPL instructions, per box - $232.78.

g) Credit will be allowed to the Applicant's contribution in section 10.3.2., where, by mutual agreement, the Applicant installs an FPL-provided secondary handhole, per FPL instructions, per handhole: 17" handhole - $21.60; 24" or 30" handhole - $61.19.

h) Credit will be allowed to the Applicant's contribution in section 10.3.2., where, by mutual agreement, the Applicant installs an FPL-provided concrete pad for a pad-mounted transformer or capacitor bank, per FPL instructions, per pad - $60.00.

i) Credit will be allowed to the Applicant's contribution in Section 10.3.2., where, by mutual agreement, the Applicant installs a portion of Company-provided flexible HDPE conduit, per FPL instructions (per foot of conduit): $0.12.

j) Credit will be allowed to the Applicant's contribution in Section 10.3.2., where, by mutual agreement, the Applicant installs an FPL-provided concrete pad and cable chamber for a pad-mounted feeder switch, per pad and cable chamber - $565.15.

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

FLORIDA POWER & LIGHT COMPANY

Thirty-Fifth Revised Sheet No. 6.120
Cancels Thirty-Fourth Revised Sheet No. 6.120

SECTION 10.4 UNDERGROUND SERVICE LATERALS FROM OVERHEAD ELECTRIC DISTRIBUTION SYSTEMS

10.4.1. New Underground Service Laterals
When requested by the Applicant, the Company will install underground service laterals from overhead systems to newly constructed residential buildings containing less than five separate dwelling units.

10.4.2. Contribution by Applicant
a) The Applicant shall pay the Company the following differential cost between an overhead service and an underground service lateral, as follows:

	Applicant's Contribution
1. For any density:	
Buildings that do not exceed four units, townhouses, and mobile homes	
a) per service lateral (includes service riser installation)	$683.84
b) per service lateral (from existing handhole or PM TX)	$348.83
2. For any density, the Company will provide a riser to a handhole at the base of a pole	$705.46

Additional charges specified in Paragraphs 10.2.10 and 10.2.11 may also apply. Underground service or secondary extensions beyond the boundaries of the property being served will be subject to additional differential costs as determined by individual cost estimates.

10.4.3. Contribution Adjustments
a) Credit will be allowed to the Applicant's contribution in Section 10.4.2 where, by mutual agreement, the Applicant provides trenching and backfilling for the Company's facilities. This credit is:

	Credit To Applicant's Contribution
1. For any density:	
Buildings that do not exceed four units, townhouses, and mobile homes - per foot	$3.48

(Continued on Sheet No. 6.125)

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

FLORIDA POWER & LIGHT COMPANY

Twenty-First Revised Sheet No. 6.125
Cancels Twentieth Revised Sheet No. 6.125

(Continued from Sheet No. 6.120)

b) Credit will be allowed to the Applicant's contribution in Section 10.4.2, where by mutual agreement, the Applicant installs Company-provided conduit, per FPL instructions, as follows:

1. For any density:

Buildings that do not exceed four units, townhouses, and mobile homes - per foot:	2" PVC	$0.60
	Larger than 2" PVC	$0.84

c) Credit will be allowed to the Applicant's contribution in Section 10.4.2, where by mutual agreement, the Applicant requests the underground service to be installed as a TUG (subject to the conditions specified in Section 10.2.8.1), per service lateral, as follows:

1. For any density:

Buildings that do not exceed four units, townhouses, and mobile homes -per service lateral:	$60.00

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

FLORIDA POWER & LIGHT COMPANY

Thirty-Second Revised Sheet No. 6.130
Cancels Thirty-First Revised Sheet No. 6.130

SECTION 10.5 UNDERGROUND SERVICE LATERALS REPLACING EXISTING RESIDENTIAL OVERHEAD AND UNDERGROUND SERVICES

10.5.1. Applicability
When requested by the Applicant, the Company will install underground service laterals from existing systems as replacements for existing overhead and underground services to existing residential buildings containing less than five individual dwelling units.

10.5.2. Rearrangement of Service Entrance
The Applicant shall be responsible for any necessary rearranging of his existing electric service entrance facilities to accommodate the proposed underground service lateral in accordance with the Company's specifications.

10.5.3 Trenching and Conduit Installation
The Applicant shall also provide, at no cost to the Company, a suitable trench, perform the backfilling and any landscape, pavement or other similar repairs and install Company provided conduit according to Company specifications. When requested by the Applicant and approved by the Company, the Company may supply the trench and conduit and the Applicant shall pay for this work based on a specific cost estimate. Should paving, grass, landscaping or sprinkler systems need repair or replacement during construction, the Applicant shall be responsible for restoring the paving, grass, landscaping or sprinkler systems to the original condition.

10.5.4. Contribution by Applicant

a) The charge per service lateral replacing an existing Company-owned overhead service for any density shall be:

	Applicant's Contribution
1. Where the Company provides an underground service lateral:	$651.49
2. Where the Company provides a riser to a handhole at the base of the pole:	$930.13

b) The charge per service lateral replacing an existing Company-owned underground service at Applicant's request for any density shall be:

1. Where the service is from an overhead system:	$643.46
2. Where the service is from an underground system:	$555.22

c) The charge per service lateral replacing an existing Customer-owned underground service from an overhead system for any density shall be: $426.82

d) The charge per service lateral replacing an existing Customer-owned underground service from an underground system for any density shall be: $91.81

The above charges include conversion of the service lateral from the last FPL pole to the meter location. Removal of any other facilities such as poles, downguys, spans of secondary, etc. will be charged based on specific cost estimates for the requested additional work.

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

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: August 31, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Guffey) SKG EJD
Office of the General Counsel (Mapp) KRM JSC

RE: Docket No. 160173-EI – Petition for approval of modification to and extension of the approved economic development and re-development rider experimental pilot tariffs, by Duke Energy Florida, LLC.

AGENDA: 09/13/16 – Regular Agenda – Tariff Filing - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 09/19/16 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: None

Case Background

On July 19, 2016, Duke Energy Florida, LLC (DEF or company) filed a petition requesting approval of modifications to and an extension of the approved pilot Economic Development (ED-1) and Economic Re-Development (EDR-1) riders (economic development riders). Modifications to these tariffs (Sheet Nos. 6.380 and 6.385) are needed to continue the pilot program for an additional three years, along with clarifications to the accompanying standard service agreement forms (Sheet Nos. 7.500 and 7.510). The tariffs and forms in this petition were initially approved by the Commission in Order No. PSC-13-0598-FOF-EI as part of DEFs' Revised and Restated Stipulation and Settlement Agreement (RRSSA).[1] Paragraph 17 and Exhibit 15 of the RRSSA provided that DEF introduce these tariffs on a pilot basis for three

[1] Order No. PSC-13-0598-FOF-EI, issued November 12, 2013, in Docket No. 130208-EI, *In re: Petition for limited proceeding to approve revised and restated stipulation and settlement agreement by Duke Energy Florida, Inc. d/b/a Duke Energy.*

years (from October 2013 to October 2016). The riders, which require a five-year electric service contract, provide base rate credits/reduction for new businesses that meet certain requirements such as minimum load, job creation, and verification that the availability of the riders are a significant factor in the customer's location or expansion decision.

Staff issued one data request to DEF on August 4, 2016, for which responses were received on August 12, 2016. The tariff pages and service agreement forms with proposed changes are contained in Attachment A of this recommendation. The Commission has jurisdiction over this matter pursuant to Sections 288.035 and 366.06, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve DEF's petition to extend its economic development riders until October 17, 2019, and approve the revised service agreement forms?

Recommendation: Yes, the Commission should approve DEF's petition to extend its economic development riders until October 17, 2019, and approve the revised service agreement forms. (Guffey)

Staff Analysis: The economic development riders are designed to attract new commercial and industrial customers to DEF's service territory and foster economic growth. The riders offer base rate electric price incentives over a five-year period for new or expanding businesses that meet certain electric load, capital investment, and job creation requirements. As shown in Table 1-1, the two riders require that the rider customers hire and maintain the following number of full-time employees.

Table 1-1
Required Full Time Employees & Capital Investments

Rider	Minimum kW Load	Number of FTEs	Capital Investment
ED-1	500	25	$500,000 or greater
EDR-1	350	15	$200,000 or greater

Source: Tariff Sheet Nos. 6.380 & 6.385

To take service under the subject riders, the customers must agree to a minimum five-year service agreement and the company will request verification from the rider customers of the number of jobs created as a direct result of the riders. DEF states that the first ED-1 customer enrolled in April 2014, and since then DEF has attracted five more customers for a total of six (one EDR-1 customer and five ED-1 customers) that has the potential to create 968 FTE jobs. DEF is also working on attracting additional customers for whom the economic development rider is a significant factor in their location/expansion decisions. DEF proposes to extend the pilot program for an additional three years, until October 17, 2019.

Table 1-2 illustrates the credits that will be applied to base demand and energy charges.

Table 1-2
Percentage Reduction in Base Demand & Energy Charges

Year	ED-1	EDR-1[2]
1	50%	50%
2	40%	35%
3	30%	15%
4	20%	0%
5	10%	0%

Source: Tariff Sheet Nos. 6.380 & 6.385

[2] The EDR-1 rider also provides a reduction of the non-fuel and non-asset securitization charge factors.

The company, in its response to staff's data request and a follow-up request, stated that the enrolled customers are currently not taking service under the economic development riders because they are not yet ready to commence their respective discounts. The single EDR-1 applicant who is in the process of ramping up the operation expects to meet the minimum service threshold by September 2016. Of the five ED-1 applicants, four are ramping up their new operations by installing new equipment, increasing product output and/or adding more shifts/increasing hours of operation. However, these four customers have not yet met the minimum ED-1 kW demand and/or load factor threshold. The company estimates these customers might receive their discounts in September 2017. The fifth ED-1 applicant has yet to construct their building.

DEF's petition states that the company is not requesting the pilot tariffs be made permanent at this time, because the company wants additional time to market the tariff and determine customers' interest in the program. In response to a staff's data request and follow-up question regarding if the company would make the riders permanent after October 17, 2019, DEF stated that if this petition is approved, DEF would make a request to the Commission on or before October 17, 2019 to: (1) continue the riders as is; (2) continue the riders with modifications based on the experienced gained from the current customers; or (3) discontinue the riders.

The riders appear to be successful in attracting new load and incremental base revenues to DEF's service territory, which benefits the general body of ratepayers. Therefore, staff recommends that the Commission approve DEF's petition for an extension of its economic development riders until October 17, 2019 and approve the revised service agreement forms as shown in Attachment A to this recommendation.

Issue 2: Should this docket be closed?

Recommendation: If Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, the tariff should remain in effect pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order. (Mapp)

Staff Analysis: If Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, the tariff should remain in effect pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.

DUKE ENERGY

SECTION NO. VI
FIRST REVISED SHEET NO. 6.380
CANCELS ORIGINAL SHEET NO. 6.380

RATE SCHEDULE ED-1
ECONOMIC DEVELOPMENT RIDER
EXPERIMENTAL PILOT PROGRAM

Availability:

Available throughout the entire territory served by the Company. Customers desiring to take service under this tariff must make a written request for service. Application for service under this tariff is available to qualifying customers ~~for 3 years after its original issue date~~until October 17, 2019.

Applicable:

To any customer taking firm service, other than residential, for light and power purposes who meet the Qualifying Criteria set forth in this tariff. This tariff provides for an Economic Development Rate Reduction Factor as described herein for new load which is defined as load being established after the date of the original issue of this tariff sheet by a new business or the expansion of an existing business. This rider is not available for retention of existing load or for relocation of existing load within the Company's service territory. Relocating businesses that provide expansion of existing business may qualify for the expanded load only. This rider is not available for short-term, construction, temporary service, or renewal of a previously existing service. Customers must execute an Economic Development Service Agreement and such agreement must specify all qualifying criteria customer expects to meet for this rider to be applicable.

Qualifying Criteria:

a) The minimum qualifying new load must be at least 500 kW with a minimum load factor of 50% at a single point of delivery.
b) The new or expanding business must be a targeted industry as defined by the state of Florida's most current economic development policy.
c) The new or expanding business must also meet at least one of the following two requirements at the project location:
   1) The addition of 25 net new full time equivalent (FTE) jobs in the Company's Florida service area; or
   2) Capital investment of $500,000 or greater and a net increase in FTE jobs in the Company's Florida service area.
d) Customer must provide written documentation attesting that the availability of this rider is a significant factor in the Customer's location/expansion decision.

Limitation of Service:

Service under this tariff is limited to a total load served under both this tariff and the EDR-1 tariff of 300 megawatts or a total of 25 customer~~s~~ accounts served under both this tariff and the EDR-1 tariff. Standby or resale service not permitted hereunder. Service under this tariff is subject to the Company's currently effective and filed "General Rules and Regulations for Electric Service." Service under this tariff may not be combined with service under the EDR-1 tariff. Service under this tariff is available on a first come, first served basis.

Otherwise Applicable General Service Tariff:

Service under this rider shall be provided under any of the Company's currently available general service tariffs to be initially determined by mutual agreement of the Company and customer based on the usage characteristics provided by the customer for new load. All provisions, terms and conditions of the Otherwise Applicable General Service Tariff shall apply.

Rate Per Month:

All charges shall be those set forth in the Otherwise Applicable General Service Tariff adjusted by the Economic Development Rate Reduction Factor.

Economic Development Rate Reduction Factor:

The following rate reduction factors shall apply:

Year of Agreement	Reduction of Base Rate Demand and Energy Charges
Year 1	50%
Year 2	40%
Year 3	30%
Year 4	20%
Year 5	10%

(Continued on Page No. 2)

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

EFFECTIVE: ~~October 17, 2013~~

DUKE ENERGY

SECTION NO. VI
~~FIRST~~ SECOND REVISED SHEET NO. 6.385
CANCELS ~~ORIGINAL~~ FIRST REVISED SHEET NO. 6.385

RATE SCHEDULE EDR-1
ECONOMIC RE-DEVELOPMENT RIDER
EXPERIMENTAL PILOT PROGRAM

Availability:

Available throughout the entire territory served by the Company. Customers desiring to take service under this tariff must make a written request for service. Application for service under this tariff is available to qualifying customers ~~for 3 years after its original issue date~~until October 17, 2019.

Applicable:

To any customer taking firm service, other than residential, for light and power purposes who meet the Qualifying Criteria set forth in this tariff. This tariff provides for an Economic Re-Development Rate Reduction Factor as described herein for new load which is defined as load being established after the date of the original issue of this tariff sheet by a new business or the expansion of an existing business. This rider is not available for retention of existing load or for relocation of existing load within the Company's service territory. Relocating businesses that provide expansion of existing business may qualify for the expanded load only. This rider is not available for short-term, construction, temporary service, or renewal of a previously existing service. Customers must execute an Economic Re-Development Service Agreement and such agreement must specify all qualifying criteria customer expects to meet for this rider to be applicable.

Qualifying Criteria:

a) New load must be at an existing Company premise location previously served by the Company which has been unoccupied or otherwise essentially dormant (evidenced by minimal to no electric usage) for a minimum period of 90 days.
b) Customer must not have a relationship with the previous occupant of the unoccupied premise location.
c) The minimum qualifying new load must be at least 350 kW with a minimum load factor of 50% at a single point of delivery.
d) The new or expanding business must be a targeted industry as defined by the state of Florida's most current economic development policy.
e) The new or expanding business must also meet at least one of the following two requirements at the project location:
   1) The addition of 15 net new full time equivalent (FTE) jobs in the Company's Florida service area; or
   2) Capital investment of $200,000 or greater and a net increase in FTE jobs in the Company's Florida service area.
f) Customer must provide written documentation attesting that the availability of this rider is a significant factor in the Customer's location/expansion decision.

Limitation of Service:

Service under this tariff is limited to a total load served under both this tariff and the ED-1 tariff of 300 megawatts or a total of 25 customer~~s accounts~~ served under both this tariff and the ED-1 tariff. Standby or resale service not permitted hereunder. Service under this tariff is subject to the Company's currently effective and filed "General Rules and Regulations for Electric Service." Service under this tariff may not be combined with service under the ED-1 tariff. Service under this tariff is available on a first come, first served basis.

Otherwise Applicable General Service Tariff:

Service under this rider shall be provided under any of the Company's currently available general service tariffs to be initially determined by mutual agreement of the Company and customer based on the usage characteristics provided by the customer for new load. All provisions, terms and conditions of the Otherwise Applicable General Service Tariff shall apply.

Rate Per Month:

All charges shall be those set forth in the Otherwise Applicable General Service Tariff adjusted by the Economic Re-Development Rate Reduction Factor.

Economic Re-Development Rate Reduction Factor:

The following rate reduction factors shall apply:

Year of Agreement	Reduction of Base Rate Demand and Energy Charge	Reduction of the Non-Fuel and non-ASC BA-1 Tariff Charges
Year 1	50%	50%
Year 2	35%	35%
Year 3	15%	15%
Year 4	0%	0%
Year 5	0%	0%

(Continued on Page No. 2)

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

EFFECTIVE: ~~April 19, 2016~~

DUKE ENERGY.

SECTION NO. VII
FIRST REVISED SHEET NO. 7.500
CANCELS ORIGINAL SHEET NO. 7.500

DUKE ENERGY FLORIDA, INC.
ECONOMIC DEVELOPMENT RIDER

Service Agreement

For a New Establishment or an Existing Establishment with Expanding Load

_____
CUSTOMER NAME

_____ _____
ADDRESS TYPE OF BUSINESS

The Customer hereto agrees as follows:

1. To create _____ full - time jobs or new capital investment of $ _____ and a net increase of full - time jobs.
2. That the quantity of new or expanded load shall be _____ KW of demand with a _____ % load factor.
3. ~~The nature of this new or expanded load is~~Type of business and expected hours of operation are _____ _____.
4. To initiate service under this rider on _____, _____, and terminate service under this rider on _____, _____. This shall constitute a period of 5 years.
5. In case of early termination by the Customer, or an early discontinuation by the Company for a violation of the terms and conditions of this rider, the Customer shall be required to repay Duke Energy Florida, Inc. the cumulative discounts received to date under this rider plus interest.
6. If a change in ownership occurs after the Customer contracts for service under this rider, the successor Customer may be allowed to fulfill the balance of the contract under rider ED-1 and continue the schedule of rate reductions.
7. All terms of Rate Schedule ED-1, Economic Development Rider, apply to this agreement and are incorporated by reference herein.

By signing below, I hereby attest that the availability of this rider is a significant factor in this Customer's location / expansion decision.

Signed: _____ Accepted by: _____
Customer Duke Energy Florida, Inc.
Printed Name: _____ Printed Name: _____
Title: _____ Title: _____

ISSUED BY: Javier J. Portuondo, Director, Rates & Regulatory Strategy - FL
EFFECTIVE: ~~October 17, 2013~~

ECON DEV

DUKE ENERGY.

SECTION NO. VII
FIRST REVISED SHEET NO. 7.510
CANCELS ORIGINAL SHEET NO. 7.510

Page 1 of 1

DUKE ENERGY FLORIDA, INC.
ECONOMIC RE-DEVELOPMENT RIDER
Service Agreement

For new load established at existing Company premise location that has been vacant for at least 90 days

_____
CUSTOMER NAME

_____ _____
ADDRESS TYPE OF BUSINESS

The Customer hereto agrees as follows:

1. To establish service at a currently vacant Company premise location and create _____ full - time jobs or new capital investment of $ _____ and a net increase of full - time jobs.
2. That the quantity of new or expanded load shall be _____ KW of demand with a _____ % load factor.
3. ~~The nature of this new or expanded load is~~Type of business and expected hours of operation are _____ _____.
4. The Company premise location for the new or expanded load has been vacant for at least 90 days.
5. The Customer load will be served with existing facilities or the Customer may be subject to contribution in aid to construction, construction advances or equipment rental charges as may be applicable in accordance with the Company's Rules and Regulations.
6. To initiate service under this rider on _____, _____, and terminate service under this rider on _____, _____. This shall constitute a period of 5 years.
7. In case of early termination by the Customer, or an early discontinuation by the Company for a violation of the terms and conditions of this rider, the Customer shall be required to repay Duke Energy Florida, Inc the cumulative discounts received to date under this rider plus interest.
8. If a change in ownership occurs after the Customer contracts for service under this rider, the successor Customer may be allowed to fulfill the balance of the contract under Rider EDR-1 and continue the schedule of rate reductions.
9. All terms of Rate Schedule EDR-1, Economic Re-Development Rider, apply to this agreement and are incorporated by reference herein.

By signing below, I hereby attest that the availability of this rider is a significant factor in this Customer's location / expansion decision and Customer has no affiliation with the previous occupant of the premise.

Signed: _____ Accepted by: _____
Customer Duke Energy Florida, Inc.
Printed Name: Printed Name:
Title: _____ Title: _____

ISSUED BY: Javier J. Portuondo, Director, Rates & Regulatory Strategy - FL
EFFECTIVE: ~~October 17, 2013~~

ECON RE-DEV

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: August 31, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Rome) CRK ELD
Office of the General Counsel (Mapp) KRM

RE: Docket No. 160085-GU – Joint petition for approval of swing service rider, by Florida Public Utilities Company, Florida Public Utilities Company-Indiantown Division, Florida Public Utilities Company-Fort Meade, and Florida Division of Chesapeake Utilities Corporation.

AGENDA: 09/13/16 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 12/11/16 (8-Month Effective Date)[1]

SPECIAL INSTRUCTIONS: None

Case Background

On April 11, 2016, Florida Public Utilities Company, Florida Public Utilities Company – Indiantown Division, and Florida Public Utilities Company – Fort Meade (jointly, FPUC), as well as the Florida Division of Chesapeake Utilities Corporation (Chesapeake) (jointly, Companies), filed a petition for approval of a swing service rider tariff applicable to certain gas transportation customers. FPUC is a local distribution company (LDC) subject to the regulatory jurisdiction of the Commission pursuant to Chapter 366, Florida Statutes (F.S.). It is a wholly-owned subsidiary of Chesapeake Utilities Corporation which is headquartered in Dover, Delaware. Chesapeake is also an LDC subject to the Commission's jurisdiction under Chapter 366, F.S. It is an operating division of Chesapeake Utilities Corporation.

[1] Joint petitioners waived the 60-day file and suspend provision of Section 366.06(3), F.S., on April 13, 2016.

The new swing service rider is a proposed cents-per-therm charge that would be included in the monthly gas bill. The Companies seek approval of this rider to expand the allocation of the intrastate capacity cost components of the Purchased Gas Adjustment (PGA) mechanism for FPUC (with the exception of the Indiantown Division)[2] and the Operational Balancing Account (OBA) for Chesapeake to include transportation customers not currently subject to those cost allocation mechanisms. In 2015, the Commission approved a first step by the Companies (Phase I) to achieve a more equitable allocation of the intrastate capacity cost components of the PGA and OBA.[3] In that Phase I petition, the Companies noted that Phase I would be followed by a separate request (Phase II) to more fully distribute these costs across a broader base of customers.[4]

The Commission first approved swing service tariffs for a Florida investor-owned gas utility in 2000 when Peoples Gas System filed numerous tariff changes to make transportation service available to all non-residential customers pursuant to Rule 25-7.0335, Florida Administrative Code (F.A.C.).[5] The Commission approved amendments to Peoples' swing service tariffs in 2015.[6]

The Office of Public Counsel (OPC) requested interested party status in this docket on May 2, 2016. During Commission staff's evaluation of the petition, staff issued two data requests to the Companies for which responses were received on May 11, 2016, and June 7, 2016, respectively. On August 2, 2016, the Companies filed an amended petition to request a modification to the stepped implementation of the Phase II proposal; this modification resulted in reductions to some of the swing service rider tariff rates for which approval is being sought. The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.05, and 366.06, F.S.

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[2] The Commission approved Indiantown's exiting of the gas merchant function by Order No. PSC-02-1655-TRF-GU, issued November 26, 2002, in Docket No. 020471-GU, *In re: Petition for authority to convert all remaining sales customers to transportation service and to terminate merchant function by Indiantown Gas Company.* Thereafter, the Commission authorized Indiantown's proposed unbundling transitional cost recovery and refund of the company's final PGA over-recovery by Order No. PSC-03-1109-PAA-GU, issued October 6, 2003, in Docket No. 030462-GU, *In re: Petition of Indiantown Gas Company for approval of transition cost recovery charge and for approval of final purchased gas adjustment true-up credit.*

[3] Order No. PSC-15-0321-PAA-GU, issued August 10, 2015, in Docket No. 150117-GU, *In re: Joint petition for approval of modified cost allocation methodology and revised purchased gas adjustment calculation, by Florida Public Utilities Company, Florida Public Utilities Company – Indiantown Division, Florida Public Utilities Company – Fort Meade, and Florida Division of Chesapeake Utilities Corporation.*

[4] Id., pp. 5-6.

[5] Order No. PSC-00-1814-TRF-GU, issued October 4, 2000, in Docket No. 000810-GU, *In re: Petition for approval of modifications to tariff provisions governing transportation of customer-owned gas and tariff provisions to implement Rule 25-7.0335, F.A.C., by Tampa Electric Company d/b/a Peoples Gas System.*

[6] Order Nos. PSC-15-0570-TRF-GU and PSC-15-0570A-TRF-GU, issued December 17, 2015 and January 7, 2016, respectively, in Docket No. 150220-GU, *In re: Petition for approval of tariff modifications related to the swing service charge, by Peoples Gas System.*

Discussion of Issues

Issue 1: Should the Commission approve the Companies' joint amended petition for approval of a swing service rider tariff and associated rates?

Recommendation: Yes. Staff recommends approval of the proposed swing service rider tariff and associated rates as shown in Attachment A. The effective date of the proposed swing service rider tariff should be six months after the date of the Commission's vote. Beginning September 1, 2017, the Companies should submit by September 1 of each year for each of the next four years included in the stepped implementation period, revised swing service rider tariffs for Commission approval. The Companies should incorporate the calculated offset of revenues from the swing service rider as a credit into the PGA proceeding for that concurrent year. (Rome)

Staff Analysis: Florida's LDCs incur intrastate capacity costs when they reserve upstream capacity to transport gas on intrastate pipelines (*i.e.*, pipelines operating in Florida only). In contrast to interstate pipelines for which there are established capacity release mechanisms approved by the Federal Energy Regulatory Commission, intrastate pipelines and LDCs do not have tariff provisions or other mechanisms that support the release of capacity to pool managers. Therefore, LDCs must use other means to recover intrastate capacity costs, such as the PGA, the OBA, or through other alternative methods such as the Companies' Phase I and Phase II proposals.[7]

To evaluate the Companies' Phase II proposal in this docket, it is necessary to offer some background information regarding the operational differences among the Companies as well as the Phase I proposal filed in 2015 in Docket No. 150117-GU. Phase II would expand on the results of Phase I and include transportation service customers who are not currently being allocated intrastate capacity costs even though they share in the benefits from projects such as infrastructure upgrades.

Background

Operational Differences among the Companies

Sales customers are primarily residential and small commercial customers that purchase gas from an LDC and receive allocations of intrastate capacity costs through the PGA charge. Only Florida Public Utilities Company and Florida Public Utilities Company – Fort Meade have sales customers.

The Companies' transportation customers can be categorized as TTS (Transitional Transportation Service) or non-TTS. TTS program shippers purchase gas for residential and small commercial customers in aggregated customer pools who do not contract directly with a shipper for their gas supply. Only Florida Public Utilities Company – Indiantown Division and Chesapeake have TTS customers. TTS customers receive allocations of intrastate capacity costs

[7] See Order No. PSC-15-0321-PAA-GU, issued August 10, 2015, in Docket No. 150117-GU, *In re: Joint petition for approval of modified cost allocation methodology and revised purchased gas adjustment calculation, by Florida Public Utilities Company, Florida Public Utilities Company – Indiantown Division, Florida Public Utilities Company – Fort Meade, and Florida Division of Chesapeake Utilities Corporation.*

through the OBA mechanism, which allows Indiantown and Chesapeake to assign intrastate capacity costs to TTS shippers, who then may pass the costs on to the TTS customers for whom they purchase gas.

Non-TTS customers are primarily large commercial or industrial customers who contract directly with a shipper for their gas supply. Non-TTS customers are not currently paying a share of the intrastate capacity costs.[8]

Table 1-1 summarizes the number of customers for each of the Companies and shows the mechanism by which each company currently recovers intrastate capacity costs from its customers. Non-TTS customers would begin paying a share of the intrastate capacity costs under the proposed swing service rider, with a few exceptions that are specifically discussed later in this recommendation.

Table 1-1
Summary of Differences among Companies

Company / Customer Category	Customers	Therms per Year (000)	Cost Recovery
Florida Public Utilities Company / Sales	55,557	36,386	PGA
Fort Meade / Sales	666	128	PGA
Indiantown / TTS Transportation	693	196	OBA
Chesapeake / TTS Transportation	14,008	7,082	OBA
Subtotal for PGA and OBA Customers	70,924	43,792	
Non-TTS Transportation Customers by Company:			
Florida Public Utilities Company	1,677	36,717	None
Fort Meade	6	20	None
Indiantown	2	2,599	None
Chesapeake	2,502	163,471	None
Subtotal for Non-TTS Transportation Customers	4,187	202,807	
Total for all Customers	75,111	246,599	

Source: Companies' responses to Staff's First Data Request; May 11, 2016.

Summary of Companies' Phase I Proposal (Docket 150117-GU)

In 2015, the Companies proposed Phase I of an anticipated two-phase process to change the way the Companies allocate intrastate capacity costs. In Phase I, the Companies sought approval to aggregate the intrastate capacity costs from the Companies and spread those costs across all customers in the PGA and TTS pools. Benefits cited by the Companies in support of the proposal included the ability to allocate the intrastate capacity costs across a larger body of customers, thereby reducing the impacts to customers of individual systems as a result of infrastructure

[8] Id., pp. 2-4.

upgrades. The Commission approved Phase I in Order No. PSC-15-0321-PAA-GU and acknowledged that the modified cost allocation methodology and resulting revisions to the PGA factor calculation would enable the Companies to have the ability to better balance the costs of individual projects across the entire Chesapeake Florida system, in contrast to spreading such costs on a more limited system-by-system basis.[9] The Companies' Phase I filing envisioned a separate subsequent filing (*i.e.*, Phase II) in which the Companies would request to expand the allocation of intrastate capacity costs to transportation customers who are not part of the PGA or TTS pools.

Evaluation of Companies' Phase II Proposal

The proposed new swing service rider would expand the allocation of intrastate capacity costs and assess an appropriate portion of these costs to customers that are not currently subject to either the PGA or the OBA mechanism, consistent with the regulatory principle that the cost causer should pay its fair portion of the costs incurred. The Companies' rate schedules that would be subject to the proposed swing service rider and the proposed swing service tariff rates for each applicable rate schedule are shown in Attachment A.

The Companies noted that customers subject to the proposed swing service rider would include TTS pool customers that currently receive an allocation of the intrastate capacity costs through the OBA mechanism. However, this does not mean that the TTS pool customers would be assigned an additional allocation of costs. As is discussed in greater detail later in this recommendation, the Companies' Phase II proposal would allocate costs to these customers directly through the swing service rider rather than through the OBA mechanism.

Allocation Methodology

The Companies asserted that the proposed cost allocation methodology would function similar to the swing service charge used by Peoples Gas System to allocate system-wide balancing costs among the rate classes based on relative consumption. The proposed three-step methodology would be used to determine the appropriate cost allocations by transportation rate schedule.

Step one consists of compiling the throughput volumes for each affected transportation and sales rate schedule to determine the percentage split between transportation and sales service customers relative to the Companies' total throughput for the affected rate schedules. This step would be performed annually based on the most recent 12-months' usage data. Based upon information provided in response to a staff data request, the initial appropriate split for allocating the annual total intrastate capacity costs of $5.3 million is 64.39 percent ($3.4 million) to transportation customers and 35.61 percent ($1.9 million) to sales customers.

In step two, the transportation customers' share of $3.4 million would be allocated to the affected transportation rate schedules in proportion to each rate schedule's share of the Companies' total throughput for the affected transportation rate schedules. The costs allocated to each rate schedule would then be divided by the rate schedule's number of therms to calculate the cost recovery factor (*i.e.*, rider) to be billed by rate schedule directly to the transportation customers.

[9] Id., p. 6.

In step three, the aggregate of the swing service revenues received would be credited to the PGA, thereby reducing costs recovered from customers subject to the PGA. Sales customers' proportionate share of the intrastate capacity costs would remain embedded in the Companies' PGA. Any over-recovery or under-recovery of intrastate capacity costs allocated to the PGA by the Companies would continue to be subject to the annual PGA "true-up."

Stepped Implementation for Non-TTS Customers

The Companies expressed recognition that the implementation of the proposed swing service rider could have a significant financial impact on non-TTS transportation customers because they do not receive an allocation of intrastate capacity costs through the current Phase I mechanism. Non-TTS transportation customers comprise the largest volume user groups on the Companies' systems.

The Companies proposed a stepped implementation process for the swing service rider to better allow these large volume customers to plan and adjust to the new cost allocation. Specifically, the Companies proposed to implement the swing service rider in stages over a period of five years for non-TTS transportation customers. The Companies' amended petition requested approval to have the swing service rider applied annually at a rate of 20 percent of the total allocation for the first year, and thereafter increase by an additional 20 percent annually so that the total allocation of 100 percent would be reached in year five.

Treatment of TTS Pool Customers

The Companies' TTS pool customers would not be subject to the stepped implementation process and would receive their full Phase II allocation beginning in the first year. To clarify, TTS pool customers would not receive a larger allocated portion of the intrastate capacity costs upon implementation of Phase II. A procedural change from the current Phase I allocation process is that the allocated costs would henceforth be charged directly to the TTS pool customers through the swing service rider rather than being charged by the Companies to shippers who then pass the costs through to TTS pool customers. The Companies stated that assessing the charge directly to TTS pool customers would provide consistency across the Companies' service platform regarding the method by which the allocated costs are recovered from transportation service customers.

As discussed above, non-TTS customers would begin to receive allocations of intrastate capacity costs under the Companies' Phase II proposal. Therefore, beginning in the first year, the implementation of Phase II would result in lower allocations of intrastate capacity costs to TTS pool customers than those customers currently receive. The Companies' TTS pool rate schedules are designated by an asterisk in Attachment A to this recommendation.

Balancing of Impacts among Customer Classes

The Companies asserted that the implementation of Phase II would enable the Companies to appropriately recover intrastate capacity costs, while allocating the costs in a more equitable manner across customer classes. The Companies acknowledged that the stepped implementation would extend the unbalanced cost allocation to the PGA and TTS pool customers for a longer period of time. However, given: (a) the significance of potential financial impacts to large volume (*i.e.*, non-TTS) transportation customers, and (b) that unlike PGA and TTS pool customers, non-TTS customers have never been allocated any portion of the intrastate capacity

costs, the Companies suggested that the proposed stepped implementation process represents a reasonable approach to achieving an appropriate allocation of these costs across all customer classes.

In response to a staff data request, the Companies stated that they had considered a 10-year implementation period. However, the Companies stated in the amended petition that the proposed five-year period with the 20 percent per year stepped allocation was an effort to strike a reasonable balance between finding the earliest and largest benefit to PGA and TTS pool customers, while not overburdening the non-TTS transportation customers. The Companies further stated that efforts to resolve inequities in the current allocation process included consideration of the benefits to the utility and the general body of ratepayers of retaining the non-TTS customers due to the large gas volumes typically used by customers in those rate classes.

Rate Schedules Excluded from Proposed Swing Service Rider

In response to a staff data request, the Companies stated that in general, they are proposing that the swing service rider exclude transportation rate schedules historically excluded from other billing adjustments made by the Companies, such as the Conservation Cost Recovery adjustment clause. The Companies' rate schedules that would be excluded from the swing service rider are listed in Table 1-2, below.

Table 1-2
Rate Schedules Excluded from Swing Service Rider

Company	Rate Schedule
Florida Public Utilities Company	Interruptible Transportation Service
	Natural Gas Vehicle Transportation Service
	Gas Lighting Service Transportation Service
Florida Public Utilities Company – Fort Meade	Natural Gas Vehicle Transportation Service
Florida Public Utilities Company – Indiantown	Natural Gas Vehicle Transportation Service
Chesapeake (Florida Division)	Firm Transportation Service-13
	Natural Gas Vehicle Transportation Service

Source: Companies' responses to Staff's First Data Request; May 11, 2016.

The Companies excluded Florida Public Utilities Company's Interruptible Transportation Service (ITS) rate schedule because the nature of service is substantially different from that of a firm transportation customer inasmuch as it is available to be interrupted at the discretion of the utility. The Companies are not proposing to apply the swing service rider to this rate schedule because the non-firm nature of ITS customers' loads does not demand that the Companies acquire additional firm capacity to support their consumption.

Each of the four Companies has a Natural Gas Vehicle Transportation Service (NGV) rate schedule. The Companies stated that these rate schedules were designed as incentive mechanisms. As such, the Companies excluded the NGV rate schedules so as to maintain the full incentive nature of these schedules and to continue to encourage the development of natural gas vehicle opportunities.

The Companies excluded Florida Public Utilities Company's Gas Lighting Service Transportation Service (GLSTS) rate schedule because the actual data for this initial period showed no therm usage for this rate schedule. If there is therm usage for this rate schedule in the future, the Companies anticipate that they then would propose that it be included in the calculation of the swing service rider.

The Companies excluded Chesapeake's Firm Transportation Service-13 (FTS-13) rate schedule because it is a closed schedule with one remaining customer taking service. This remaining customer has approached the utility in an effort to negotiate a special contract in order to avoid a bypass situation.

Customer Impacts

The proposed Phase II allocation methodology would result in a reduction of costs assigned to sales (PGA) customers and transportation customers in the TTS pools. The increased costs that would be borne by non-TTS transportation customers would be mitigated by the stepped implementation of the swing service rider factors.

PGA Customers

Under the proposed Phase II allocation methodology, PGA customers would receive reduced allocations of the intrastate capacity costs of approximately $0.014 per therm in the first year of the stepped implementation period and $0.028 per therm by year two of the program. At the end of the stepped implementation in year 5, the full estimated reduction would be approximately $0.07 per therm for PGA customers. For a typical residential customer using 20 therms per month, this would represent a monthly bill savings of about $1.40.

TTS Pool Customers

As stated earlier in this recommendation, the Companies' TTS pool customers would not be subject to the stepped implementation process and would receive their full Phase II allocation through the swing service rider beginning in the first year. Under the proposed Phase II allocation methodology, TTS pool customers would receive a reduced allocation of the intrastate capacity costs of approximately $0.07 per therm. For a typical residential customer using 20 therms per month, this would represent a monthly bill savings of about $1.40.

Non-TTS Transportation Customers

Under the proposed Phase II allocation methodology, non-TTS transportation customers would begin to receive a proportionate allocation of the intrastate capacity costs through the stepped implementation process. The swing service rider rates included in Attachment A that are applicable to non-TTS transportation customer rate schedules represent the Companies' proposal to assess 20 percent of the full swing service rider allocation for the first year of stepped implementation. As is discussed in greater detail later in this recommendation, the Companies anticipate separate annual tariff filings over the next four years seeking approval to accomplish

the stepped increases in swing service rider rates necessary to achieve the proportionate cost allocations that are appropriate for each non-TTS transportation customer rate schedule.

Transportation Customers under Special Contracts

The Companies noted that as special contracts come up for renewal over time, the allocation of some appropriate portion of the intrastate capacity costs would be included as a topic in the contract negotiations. Any such negotiated special contracts would result in an additional credit to the PGA. Such discussions also would take into consideration the market conditions at the time of the negotiations and the recognition that retention of customers subject to special contracts is beneficial to the utility and the general body of ratepayers due to the very large gas volumes typically contracted for by these customers. In the aggregate, customers under special contracts consume nearly half of the total system throughput.

Outreach to Affected Parties

During the evaluation of how to address the allocation of intrastate capacity costs, the Companies hosted a meeting in May 2015 to which all interested parties, including OPC and Commission staff, were invited. At the meeting, the Companies provided an opportunity for attendees to engage in an open dialogue. Subsequent to the meeting, the Companies communicated directly with interested parties, including shippers, regarding potential plans, options, and areas of concern. The Companies also have developed a communication strategy that will include direct communication with the largest transportation customers, as well as notices issued via bill inserts for all non-TTS transportation customers. At present, the Companies are having discussions with appropriate internal groups regarding the best means of disseminating information to impacted customers.

Companies' Future Filings

To complete the proposed five-year stepped implementation process, the Companies would submit filings each year for the next four years (*i.e.*, 2017 through 2020) requesting Commission approval of the revised swing service rider rates. In response to a staff data request, the Companies proposed that procedurally, the annual update of the tariff amounts be filed in the same general time frame and handled in a manner similar to the Gas Reliability Infrastructure Program.

The Companies would calculate the prospective swing service rider rates annually based on the most recent 12 months of actual data. Thus, as a hypothetical example, the Companies would use actual data from June 2016 through May 2017 to calculate the rates to be in effect from January 2018 through December 2018. The filing would be submitted to the Commission by September 1, 2017. This proposed time line would allow the Companies sufficient time to calculate the swing service rider in advance of the annual PGA projection clause, thereby facilitating the incorporation of the calculated offset into the PGA proceeding for that current year. In essence, the amount calculated and billed, in the aggregate, to the transportation customers would be reflected as a credit to the PGA balance at the time of its calculation.

Proposed Delayed Implementation Date

The Companies expressed their belief that non-TTS transportation customers should bear their fair portion of intrastate capacity costs. However, the Companies also recognized the potential impacts to large customers that historically have not received allocations of these costs.

Therefore, the Companies requested that the effective date for implementation of the swing service rider tariff be delayed for six months from the date of the Commission's approval to mitigate impacts to non-TTS customers and to better facilitate the communication efforts with affected customers. All proposed swing service rider rates included in Attachment A would become effective six months after the date of the Commission's approval and would be applicable through the last billing cycle for December 2017.

Conclusion

Based on its review of the information provided in the joint petition, amended petition, and in response to staff's data requests, staff believes that the Companies' proposed swing service rider is reasonable. Staff believes that the implementation of the proposed swing service rider would enable the Companies to recover their costs while allocating the costs in a more equitable manner across customer classes.

Staff recommends approval of the proposed swing service rider tariff and associated rates as shown in Attachment A. The effective date of the proposed swing service rider tariff should be six months after the date of the Commission's vote. Beginning September 1, 2017, the Companies should submit by September 1 of each year for each of the next four years included in the stepped implementation period, revised swing service rider tariffs for Commission approval. The Companies should incorporate the calculated offset of revenues from the swing service rider as a credit into the PGA proceeding for that concurrent year.

Issue 2: Should this docket be closed?

Recommendation: If Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, any revenues collected once the tariff becomes effective should be held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order. (Mapp)

Staff Analysis: If Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, any revenues collected once the tariff becomes effective should be held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.

Chesapeake Utilities Corporation – Florida Division
Swing Service Rider Rates

Rate Schedule	Classification	Rates per Therm
* Firm Transportation Service A	FTS-A	$0.0521
* Firm Transportation Service B	FTS-B	$0.0539
* Firm Transportation Service 1	FTS-1	$0.0591
* Firm Transportation Service 2	FTS-2	$0.0627
* Firm Transportation Service 2.1	FTS-2.1	$0.0553
* Firm Transportation Service 3	FTS-3	$0.0504
* Firm Transportation Service 3.1	FTS-3.1	$0.0442
Firm Transportation Service 4	FTS-4	$0.0091
Firm Transportation Service 5	FTS-5	$0.0087
Firm Transportation Service 6	FTS-6	$0.0084
Firm Transportation Service 7	FTS-7	$0.0090
Firm Transportation Service 8	FTS-8	$0.0075
Firm Transportation Service 9	FTS-9	$0.0084
Firm Transportation Service 10	FTS-10	$0.0063
Firm Transportation Service 11	FTS-11	$0.0090
Firm Transportation Service 12	FTS-12	$0.0071
Experimental Rate Schedules	Classification	Rates per Bill
* Firm Transportation Service A	FTS-A	$0.4481
* Firm Transportation Service B	FTS-B	$0.8193
* Firm Transportation Service 1	FTS-1	$1.2766
* Firm Transportation Service 2	FTS-2	$2.7463
* Firm Transportation Service 2.1	FTS-2.1	$8.4332
* Firm Transportation Service 3	FTS-3	$11.2896
* Firm Transportation Service 3.1	FTS-3.1	$27.9742

Source: Companies' joint petition, Exhibit B.

* Indicates a TTS pool rate schedule that will receive full Phase II allocation in Year One.

Florida Public Utilities Company
Swing Service Rider Rates

Rate Schedule	Rates per Therm
Rate Schedule GSTS-1	$0.0090
Rate Schedule GSTS-2	$0.0083
Rate Schedule LVTS	$0.0083

Source: Companies' joint petition, Exhibit B.

Florida Public Utilities Company – Fort Meade
Swing Service Rider Rates

Rate Schedule	Rates per Therm
Rate Schedule GSTS-1	$0.0076

Source: Companies' joint petition, Exhibit B.

Florida Public Utilities Company – Indiantown
Swing Service Rider Rates

Rate Schedule	Classification	Rates per Therm
* Transportation Service 1	TS1	$0.0441
* Transportation Service 2	TS2	$0.0392
* Transportation Service 3	TS3	$0.0468
Transportation Service 4	TS4	$0.0139

Source: Companies' joint petition, Exhibit B.

* Indicates a TTS pool rate schedule that will receive full Phase II allocation in Year One.

All proposed swing service rider rates included in Attachment A would become effective six months after the date of the Commission's approval and would be applicable through the last billing cycle for December 2017.

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: August 31, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Hudson, Johnson)
Division of Accounting and Finance (Norris)
Division of Engineering (P. Buys, King)
Office of the General Counsel (Murphy)

RE: Docket No. 140186-WU – Application for staff-assisted rate case in Brevard County by Brevard Waterworks, Inc.

AGENDA: 09/13/16 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Brevard Waterworks, Inc. (Brevard or utility) is a Class C utility providing water service to approximately 236 residential customers and one general service customer in subdivisions known as Kingswood and Oakwood in Brevard County. The utility has been in existence since 1971. The utility purchases bulk water from Brevard County (county).

On September 29, 2014, Brevard filed its application for the rate increase at issue in the instant docket. On August 14, 2015, by Order No. PSC-15-0329-PAA-WU, the Commission approved Phase I rates and ordered Brevard to work with the Office of Public Counsel (OPC) and the county to submit to this Commission, within 90 days of the issuance of the PAA Order, a long-term solution and options of how best to address significant issues regarding the water system

and rates. The issues regarding the water system included the deterioration of the distribution system. It further stated that such proposal is to include a review of available options and the implications of each such option.[1] OPC conducted meetings on September 8 and 29, 2015, with the customers of Brevard. On October 29, 2015, OPC conducted a meeting with Brevard representatives in attendance. The utility and OPC have both filed comments regarding the unaccounted for water in the water distribution system.

Staff planned to file a recommendation on March 24, 2016, regarding the available options. However, on March 14, 2016, OPC and Brevard jointly requested that the Commission defer consideration of the Phase II rates for Brevard until the September 2016 Commission Conference. OPC and Brevard stated that additional time was needed to find the most cost-effective solution to resolve the unaccounted for water issue. The options would include, but not be limited to, obtaining alternative funding for the repair and replacement of the infrastructure in the Oakwood subdivision. Also, the letter included language indicating that the additional time would be used to develop a long-term solution and options of how best to address the significant issues regarding the water system and rates.

By letter dated August 1, 2016, the utility filed additional information for staff to consider in its recommendation on the Phase II adjustment. The letter indicated that Brevard County has no interest in purchasing the water system. The St. John's River Water Management District acknowledged that a line replacement program would be beneficial for water conservation. However, the line replacement program would not qualify for the cost sharing provided under the cooperative funding program because the utility system is not contained in one of the Rural Economic Development Initiative communities. The utility stated it will continue to explore the possibility of obtaining a low interest loan through the state revolving fund with the Department of Environmental Protection.

The Commission has jurisdiction in this case pursuant to Sections 367.011, 367.0814, 367.101, and 367.121, Florida Statutes (F.S.).

[1]Order No. PSC-15-0329-PAA-WU, issued August 14, 2015, in Docket No. 140186-WU, *In re: Application for staff-assisted rate case in Brevard County by Brevard Waterworks, Inc.*

Discussion of Issues

Issue 1: What is the appropriate revenue requirement for Phase II?

Recommendation: The appropriate revenue requirement for Phase II is $140,321. (P. Buys, Norris)

Staff Analysis: Per Order No. PSC-15-0329-PAA-WU, the Commission directed Brevard to work with OPC and the county to explore solutions to address ongoing rate and unaccounted for water issues. The Commission also ordered that purchased water expense be reduced by $30,511 due to excessive unaccounted for water (EUW). Brevard argued at the Commission Conference that an unaccounted for water adjustment would leave the utility with two options: replace the aging infrastructure and request rates to recover the prudently incurred costs, or abandon the utility and let the county take over.

On November 19, 2015, Brevard filed with the Commission a summary of actions taken by the utility since the Commission's Order. The summary included:

- Information about the customer meetings.
- New purchased water rates.
- Additional cost incurred after the Order was issued.

OPC submitted a response to Brevard's November 19, 2015 filing on November 30, 2015.

Results of OPC Meeting with Brevard Customers

Brevard asserts that the ultimate long-term solution to the utility's EUW would be to replace the water distribution system throughout the service territory. Subsequent to the previously discussed Order, Brevard contracted U.S. Water Services Corporation (U.S. Water) to prepare an engineering plan for the replacement of the existing water distribution system throughout the Oakwood subdivision. The plan includes the replacement of the water distribution system in four phases. The plan also includes the replacement of the existing 2-inch and 4-inch water lines with 3-inch and 4-inch Polyvinyl Chloride (PVC) water lines. The new plan differs from what was first presented in that customers' service lines will not be moved from the back of the lot to the front. U.S. Water also prepared bid documents for the replacement project. Several companies expressed interest in the replacement project; however, only one company submitted a bid to U.S. Water. Based on the bid, the total cost of the replacement project was estimated to be approximately $428,040. This amount is a little more than half of the estimated price ($835,437) that was presented during the Phase I portion of the rate case. Brevard provided OPC with a schedule showing the impact on customers' rates if the replacement project were approved. The schedule included the cost of the replacement project, the necessary amortization of loss on retired assets, depreciation expense, rate of return, and regulatory assessment fees. The schedule showed the Commission approved Phase I rates would increase by approximately 31.04 percent.

Three meetings were conducted between September 8 and October 29, 2015. At the first two meetings, conducted by OPC, one customer attended. The third customer meeting, conducted by OPC and Brevard, was held on October 29, 2015. The schedule showing the estimated 31.04 percent increase over the Commission approved Phase I rates associated with the replacement project was provided to the customers prior to the third meeting. At the last customer meeting, attended by approximately 20 customers, a petition signed by Brevard customer's was presented to OPC. Approximately 113 customers signed the Petition with 111 customers residing in the Oakwood subdivision. The cover letter of the Petition indicated the customers object to a rate increase and to the long-term solution of replacing the distribution system. Brevard asserts that going forward with the replacement project is not appropriate at this time due to the overwhelming customer opposition to the project. Brevard also asserts that if it does go ahead with the project, it will cause further financial burden to the customers. OPC did not offer an opinion on whether or not the utility should move forward with the replacement project. However, OPC asserts that an adjustment for EUW should still be applied to the Phase II rates.

The customer-signed petition also expressed that the customers would like Brevard to abandon the system and have the county take it over. Brevard met with the county in January 2016. The county indicated to Brevard that it had no interest in purchasing or taking over the system. The county stated that there was no perceived benefit to the existing customers if the county took over the system.

As noted in Order No. PSC-15-0329-PAA-WU, Brevard attempted to determine the cause of EUW by using several different methods. Brevard now intends to utilize ground-penetrating radar (GPR). GPR has been used and tested by the Florida Rural Water Association in cooperation with U.S. Water. GPR was used to test the distribution systems in two different systems managed by U.S. Water. Using GPR and other methods, Brevard will continue to try to identify and repair the causes of EUW.

Staff agrees with Brevard that replacing the existing distribution system in the Oakwood subdivision would resolve the utility's EUW issues; however, as discussed, the utility's customers object to the replacement project and its potential rate impact. Rule 25-30.4325(10), F.A.C., states that the Commission will consider all relevant factors when considering whether an adjustment to operating expense for EUW will be made. The relevant factors include whether the reason for EUW has been identified, whether a solution has been implemented or whether the proposed solution is economically feasible. Staff believes that the negative customer input is an indication that the replacement project may not be economically feasible. Based on the opposition expressed by Brevard's customers, staff agrees with the utility that it should not proceed with the replacement project. Brevard has complied with the Commission's Order to provide its customers with the costs of a reasonable long-term solution to the EUW situation. If customers are unwilling to pay for a long-term solution, then staff recommends that the customers pay for all water purchased by Brevard. Because staff is recommending that the utility not proceed with the replacement project at this time, staff recommends that the adjustment made in Phase I for EUW ($30,511) is no longer warranted.

Adjustment to Purchased Water

Subsequent to Order No. PSC-15-0329-PAA-WU, Brevard also worked with the county to establish new purchased water rates. The county, at its board meeting, approved the new rates for Brevard. The utility estimated that the new rates, effective November 2015, would reduce the purchased water expense by approximately $30,000. As previously stated, Brevard's purchased water expense was reduced by $30,511 due to EUW. In its November 19, 2015 letter, Brevard argued that since the prospective rates charged by the county will reduce the purchased water costs approximately equal to the Commission previously approved reduction, Brevard did not believe it was necessary to revisit the Commission-approved reduction adjustment in purchased water expense at this time. Brevard asserts that if the purchased water rate reduction is passed to the customers then the Commission should revisit the EUW adjustment. It is Brevard's position that the net effect is identical.

OPC argues that the customers' rates should be automatically reduced due to Brevard's reduced purchased water rates pursuant to Section 367.081(4)(b), F.S. OPC reads the statute to say that it mandates an automatic decrease in rates whenever the reselling utility has a reduction in its purchased water expense. OPC emphasizes the part of the statute that reads that the utility's customer rates "shall be automatically increased or decreased without hearing, upon verified notice to the Commission 45 days prior to its implementation of the increase or decrease of the rates charged by the governmental authority..." OPC argues that Brevard's letter dated November 19, 2015,[2] should be considered the "verified notice to the Commission." In this context, staff observes that, pursuant to Rule 25-30.425(1), F.A.C., a verified notice must include the following for there to be a pass through rate adjustment authorized by Section 367.081(4)(b), F.S.:

> (a) A certified copy of the order, ordinance or other evidence whereby the rates for utility service are increased or decreased by the governmental agency or by a water or wastewater utility regulated by the Commission, along with evidence of the utility service rates of that governmental agency or water or wastewater utility in effect on January 1 of each of the three preceding years.
>
> (b) A statement setting out by month the charges for utility services purchased from the governmental agency or regulated utility for the most recent 12-month period.
>
> (c) A statement setting out by month the gallons of water or wastewater treatment purchased from the governmental agency or regulated utility for the most recent 12-month period. If wastewater treatment service is not based on a metered flow, the number of units by which the service is measured shall be stated.
>
> 2. A statement setting out by month gallons of water and units of wastewater service sold by the utility for the most recent 12-month period.
>
> (d) A statement setting out by month the gallons of water or wastewater treatment purchased from any other government entity or utility company.

[2] See Document No. 07361-15, "Analysis of Unaccounted for Water"

(e) A statement setting out by month the gallons of water pumped or wastewater treated by the utility filing the verified notice.

(f) If the total water available for sale is in excess of 110% of the water sold, a statement explaining the unaccounted for water.

These requirements are simply not addressed in Brevard's November 19, 2015, letter and thus, the pass through rate process has not been triggered. Moreover, Brevard argues that the pass through statute anticipates an application filed outside a rate case. When a pass through application is filed with the Commission, the review performed by staff is limited as opposed to a staff assisted rate case in which staff reviews all relevant information. Staff agrees with Brevard that the automatic decrease provision of Section 367.081(4)(b), F.S., (relied upon by OPC) does not logically apply in the context of a rate case. In addition to there being no "verified notice," staff observes that Section 367.081(4)(b), F.S., provides that "the provisions of this subsection do not prevent a utility from seeking a change in rates pursuant to the provisions of subsection (2)." Section 367.081(2)(a), F.S., is incorporated by reference in the SARC statute[3] and represents the Commission's authority to "fix rates which are just, reasonable, compensatory and not unfairly discriminatory."

However, notwithstanding the inapplicability of the pass through rate process to the instant proceeding, staff recommends that the lower cost of water from the county must be considered in setting Phase II rates in the instant rate case.

In Phase I, the utility's total purchased water expense of $115,137 was decreased by $30,511 due to an EUW of 26.5 percent. Including the adjustment for EUW, the Commission approved purchased water expense was $84,626 ($115,137 - $30,511) in Phase I. To calculate the Phase II revenue requirement, staff removed the EUW adjustment. Staff then made an adjustment to reflect the lower purchased water rate from Brevard County by annualizing the expense using the lower rates and the test year determinants. This calculation results in an annual purchased water expense of $58,629 for Phase II. As such, staff recommends that the purchased water expense be decreased by $56,508 ($115,137 - $58,629) in Phase II to reflect the pass through of the lower rates from Brevard County. The net adjustment to Phase I revenue requirement, based on removal of the $30,511 EUW adjustment and reduction of purchased water by $56,508, is a decrease of $25,998 ($30,511 - $56,508). In it's August 1, 2016 letter, Brevard agreed with staff's methodology to reflect the most recent charges.

Additional Cost

As part of its November 19, 2015 filing, Brevard also requested recovery of the additional costs related to analyzing the replacement project, as well as the cost of the customer meetings and subsequent Commission Conference. The break down of the costs is as follows:

Table 1-1
Replacement Project Costs

[3]*See* Section 367.0814(3), F.S., "The provisions of 367.081(1), (2)(a), and (3) shall apply in determining the utility's rates and charges.

Event	Charge
Engineering Fees for preparing the bid	$17,790
Legal Advertisement for the bid	444
Noticing for the customer meetings	509
Travel to the customer meetings and Commission Conference	698
Total	$19,441

When the total cost of $19,441 is amortized over five years, the annual revenue impact is $3,888. Brevard did provide invoices for the additional costs. Staff also used the same methodology from Phase I to calculate the cost of additional customer notices. Staff believes that this amount is reasonable and prudent, and OPC does not object to the request. Brevard notes that if the replacement project were to move forward, $18,234 (engineering fees and legal advertisement) of the additional cost above could be included in the amount for the replacement project.

Staff recommends approval of the additional cost incurred by Brevard in analyzing the replacement project. Staff verified the costs with the invoices that were provided and recommends the costs are prudent. OPC does not object to the recovery of the additional costs. The costs should be amortized over five years resulting in an increase of $3,888.

Revenue Requirement

Staff recommends an annual decrease of $23,306 (14.24 percent). This amount reflects the difference between the net decrease of $25,998 discussed above and the $3,888 increase associated with the amortization of the engineering costs. The amounts are not precisely additive due to taxes other than income. This recommended revenue requirement allows the utility the opportunity to recover its expenses and earn an 8.29[4] percent return on its investment. Staff's Phase II revenue requirement calculation is shown on Table 1-2 below:

[4] Staff notes that the rate of return is higher than the 8.19 percent approved in Order No. PSC-15-0329-PAA-WU due to the correction of a formula error in the Phase I calculation.

Table 1-2
Phase II Water Revenue Requirement

	Water
Adjusted Rate Base	$78,930
Rate of Return	x 8.29%
Return on Rate Base	$6,543
Adjusted O&M Expense	122,459
Depreciation Expense	4,862
Amortization Expense	(295)
Taxes Other Than Income	6,752
Phase II Revenue Requirement	$140,321
Less Phase I Revenue Requirement	163,627
Annual Decrease	($23,306)
Percent Decrease	(14.24%)

Summary

Staff agrees with Brevard that the replacement project for the Oakwood subdivision is not economically feasible pursuant to Rule 25-30.4325(10), F.A.C. The rule provides that the Commission will consider all relevant factors. Staff recommends that the negative customer input is an indication that the replacement project is not economically feasible. The customers during the last customer meeting expressed that they do not wish Brevard to replace the distribution system. Taking into account the additional information about the cost of the replacement project and comments from the customers opposing the project, staff recommends an adjustment for EUW should not be included in the Phase II revenue requirement. Staff also recommends that the lower purchase water rates and the additional costs associated with analyzing the replacement project be applied to the Phase II rates. The net effect of staff's recommendation is a Phase II revenue requirement of $140,321. This represents a $23,306 (14.24 percent) decrease from the Phase I revenue requirement.

Issue 2: What is the appropriate rate structure and rates for Phase II?

Recommendation: The Phase II rate decrease of 15 percent for water should be applied as an across-the-board decrease to the existing Phase I rates. The rates, as shown on Schedule No. 4, 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. 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 that the notice was given within 10 days of the date of the notice. (Hudson)

Staff Analysis: The recommended Phase II revenue, less miscellaneous service revenues, would result in a decrease of 15 percent ($23,306) for water over the Phase I revenue requirement ($155,401). The calculation is as follows:

Table 2-1
Percentage Phase II Rate Decrease

		Water
1.	Phase I Revenue Requirement	$163,627
2.	Less Miscellaneous Service Revenues	($8,226)
3.	Phase I Service Revenue Requirement	$155,401
4.	Phase II Revenue Decrease	($23,306)
5.	% Service Rate Decrease (Line 4/Line 3)	(15%)

Staff recommends a Phase II rate decrease of 15 percent for water, applied as an across-the-board decrease to the existing Phase I rates. The rates, as shown on Schedule No. 4, 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. 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 that the notice was given within 10 days of the date of the notice.

Issue 3: Should this docket be closed?

Recommendation: No. In the event of a protest, the recommended rates should be implemented and staff will file a subsequent recommendation to address the appropriate monies to be held subject to refund, if any. Brevard should file revised tariffs 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. 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 revised tariff sheets and customer notice have been filed by the utility and approved by staff. Once these actions are complete, this docket should be closed administratively. (Murphy)

Staff Analysis: I In the event of a protest, the recommended rates should be implemented and staff will file a subsequent recommendation to address the appropriate monies to be held subject to refund, if any. Brevard should file revised tariffs 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. 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 revised tariff sheets and customer notice have been filed by the utility and approved by staff. Once these actions are complete, this docket should be closed administratively.

BREVARD WATERWORKS **SCHEDULE NO. 1-A**
TEST YEAR ENDED 08/31/14 **DOCKET NO. 140186-WU**
SCHEDULE OF PHASE II WATER RATE BASE

DESCRIPTION	PHASE I	STAFF ADJUSTMENTS TO UTIL. BAL.	BALANCE PER STAFF
UTILITY PLANT IN SERVICE	$102,754	$0	$102,754
LAND & LAND RIGHTS	2,766	0	2,766
ACCUMULATED DEPRECIATION	(35,872)	0	(35,872)
CIAC	(7,803)	0	(7,803)
ACCUMULATED AMORTIZATION OF CIAC	1,777	0	1,777
WORKING CAPITAL ALLOWANCE	18,071	(2,764)	15,307
WATER RATE BASE	$81,694	($2,764)	$78,930

BREVARD WATERWORKS TEST YEAR ENDED 08/31/14 ADJUSTMENTS TO PHASE II RATE BASE	SCHEDULE NO. 1-B DOCKET NO. 140186-WU
	WATER
WORKING CAPITAL ALLOWANCE	
To reflect the appropriate amount of working capital.	($2,764)

BREVARD WATERWORKS
TEST YEAR ENDED 08/31/14
SCHEDULE OF CAPITAL STRUCTURE

SCHEDULE NO. 2
DOCKET NO. 140186-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.	TOTAL COMMON EQUITY	$30,660	$63,818	$94,478	($20,763)	$73,715	93.39%	8.74%	8.16%
2.	LONG TERM DEBT	$0	$0	$0	$0	$0	0.00%	0.00%	0.00%
3.	CUSTOMER DEPOSITS	$4,132	$2,552	$6,684	($1,469)	$5,215	6.61%	2.00%	0.13%
4.	TOTAL	$34,792	$66,370	$101,162	($22,232)	$78,930	100.00%		8.29%

RANGE OF REASONABLENESS	LOW	HIGH
RETURN ON EQUITY	7.74%	9.74%
OVERALL RATE OF RETURN	7.36%	9.23%

BREVARD WATERWORKS
TEST YEAR ENDED 08/31/14
SCHEDULE OF PHASE II WATER OPERATING INCOME

SCHEDULE NO. 3-A
DOCKET NO. 140186-WU

		PHASE I	STAFF ADJUSTMENTS	STAFF ADJUSTED TEST YEAR	ADJUST. FOR INCREASE	PHASE II REVENUE REQUIREMENT
1.	**OPERATING REVENUES**	$163,627	$0	$163,627	($23,306) (14.24%)	$140,321
	OPERATING EXPENSES:					
2.	OPERATION & MAINTENANCE	$144,569	($22,110)	$122,459	$0	$122,459
3.	DEPRECIATION (NET)	4,862	0	4,862	0	4,862
4.	CIAC AMORTIZATION EXPENSE	(295)	0	(295)	0	(295)
5.	TAXES OTHER THAN INCOME	7,801	0	7,801	(1,049)	6,752
6.	INCOME TAXES	0	0	0	0	0
7.	**TOTAL OPERATING EXPENSES**	$156,936	($22,110)	$134,827	($1,049)	$133,778
8.	**OPERATING INCOME/(LOSS)**	$6,691		$28,800		$6,543
9.	**WATER RATE BASE**	$81,694		$78,930		$78,930
10.	**RATE OF RETURN**	8.19%		36.49%		8.29%

BREVARD WATERWORKS TEST YEAR ENDED 08/31/14 ADJUSTMENTS TO PHASE II OPERATING INCOME	SCHEDULE NO. 3-B DOCKET NO. 140186-WU
	WATER
OPERATION AND MAINTENANCE EXPENSES	
1. Purchased Water Expense (610)	
a. To reflect the appropriate Phase II purchased water expense.	($25,998)
2. Miscellaneous Expense (675)	
a. To reflect the amortization of non-reoccurring expenses.	$3,888
TOTAL OPERATION & MAINTENANCE ADJUSTMENTS	($22,110)

BREVARD WATERWORKS, INC. TEST YEAR ENDED SEPTEMBER 30, 2014 MONTHLY WATER RATES		SCHEDULE NO. 4 DOCKET NO. 140186-WU
	COMMISSION APPROVED PHASE I RATES	STAFF RECOMMENDED PHASE II RATES
Residential, General Service, and Irrigation		
Base Facility Charge by Meter Size		
5/8" x 3/4"	$21.38	$18.17
3/4"	$32.07	$27.26
1"	$53.45	$45.43
1-1/2"	$106.90	$90.85
2"	$171.04	$145.36
3"	$342.08	$290.72
4"	$534.50	$454.25
6"	$1,069.00	$908.50
8"	$1,710.40	$1,453.60
10"	$2,458.70	$2,089.55
Charge per 1,000 gallons - Residential and Irrigation		
0-4,000 gallons	$10.73	$9.12
Over 4,000 gallons	$16.10	$13.69
Charge per 1,000 gallons - General Service	$11.69	$9.94
Private Fire Protection		
Base Facility Charge by Meter Size		
2"	$14.25	$12.11
3"	$28.51	$24.23
4"	$44.54	$37.85
6"	$89.08	$75.71
8"	$142.53	$121.13
10"	$204.89	$174.13
Typical Residential 5/8" x 3/4" Meter Bill Comparison		
4,000 Gallons	$64.30	$54.65
6,000 Gallons	$96.50	$82.03
10,000 Gallons	$160.90	$136.79

Item 15

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: August 31, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Hudson, Daniel, Johnson)
Division of Accounting and Finance (Bulecza-Banks, Mouring, L. Smith II)
Division of Engineering (P. Buys, King)
Office of the General Counsel (Corbari)

RE: Docket No. 150181-WU – Application for staff-assisted rate case in Duval County by Neighborhood Utilities, Inc.

AGENDA: 09/13/2016 – Proposed Agency Action – Except for Issue Nos. 9, 10, and 18 – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: 01/12/17 (15-Month Effective Date (SARC))

SPECIAL INSTRUCTIONS: None

Table of Contents

Case Background

Neighborhood Utilities, Inc. (Neighborhood or utility) is a Class C utility providing service to approximately 441 water customers in Duval County, and is located within the St. Johns River Water Management District (SJRWMD). Neighborhood was granted Certificate No. 430-W in 1984.[1] The utility's rates and charges were last approved in a staff-assisted rate case (SARC) in 2010.[2] In 2014, the utility's index application was approved and the rates were reduced to reflect the expiration of rate case expense approved in 2010.

On August 10, 2015, Neighborhood filed its application for a 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 ended June 30, 2015, for the instant docket. According to Neighborhood's 2015 annual report, its total gross revenues were $138,830 and total operating expenses were $137,980. The Commission has jurisdiction in this case pursuant to Sections 367.0812, 367.0814, and 367.091, Florida Statutes, (F.S.).

[1] Order No. 13723, issued September 28, 1984, in Docket No. 840063-WU, *In re: Application of Neighborhood Utilities, Inc. for a certificate to operate a water utility in Duval County, Florida.*
[2] Order No. PSC-10-0024-PAA-WU, issued January 11, 2010, in Docket No. 090060-WU, *In re: Application for staff-assisted rate case in Duval County by Neighborhood Utilities.*

Discussion of Issues

Issue 1: Is the quality of service provided by Neighborhood Utilities, Inc. satisfactory?

Recommendation: Yes. The overall quality of service provided by Neighborhood should be considered satisfactory. (P. Buys)

Staff Analysis: Pursuant to Rule 25-30.433(1), Florida Administrative Code (F.A.C.), in water and wastewater rate cases, the Commission shall determine the overall quality of service provided by the utility, which is derived from evaluating 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.

In its previous rate case, Neighborhood's quality of service was deemed marginal due to its failure to provide routine maintenance on plant facilities, problems related to maintaining chlorine residuals, and customers not receiving boil water notices. On May 27, 2016, the Office of Public Counsel (OPC) submitted a letter[3] outlining specific concerns regarding information in staff's preliminary review of Neighborhood's requested increase (Staff Report). In its letter, OPC stated that it believes that the utility continues to provide marginal quality of service due to the deferral of maintenance on the plant and poor customer service. Staff's analysis outlined below gives consideration to the Commission's decision in Neighborhood's previous rate case as well as the concerns expressed by OPC.

Quality of the Utility's Product

Staff's evaluation of Neighborhood's product quality consisted of a review of the utility's compliance with the DEP primary and secondary drinking water standards as well as a review of customer complaints. Primary standards protect public health while secondary standards regulate contaminants that may impact the taste, odor, and color of drinking water.

Staff reviewed chemical analyses of samples dated June 4, 2012, and June 17, 2015. All results comply with the DEP primary and secondary water quality standards. These chemical analyses are performed every three years, with the next scheduled analysis to be completed in 2018.

At the time of the Commission's order in Neighborhood's previous rate case, the utility was in compliance with DEP rules and regulations. The Commission did note however, that the utility was experiencing sporadic compliance problems related to maintaining chlorine residuals at points furthest from the water treatment plant. Staff reviewed DEP records to determine if the compliance problems described in the utility's last rate case remained an issue, and staff did not find any issues of non-compliance since its last rate case in 2010. Therefore, staff believes

[3] Document No. 03247-16

Neighborhood has taken steps to address the issues identified in the last rate case such as replacing the chlorine pump and supply feed lines.

Staff's analysis also considered input from customers regarding the quality of the utility's product. Staff reviewed the Commission's complaint records since January 1, 2010, and found no quality of service complaints filed against Neighborhood.

Staff also requested complaints against the utility filed with the DEP since January 1, 2010. DEP responded with two complaints, one in 2015 and one in 2016. Both DEP complaints were made by the same individual, and expressed concern regarding hydrogen sulfide odor due to low chlorine residual. Neighborhood claimed that it had chlorine feed equipment problems at the time of the customer's complaint. Neighborhood's chlorine levels did not fall below DEP's minimum requirements; however, they did fall to a level that customers noticed a sulfur odor. In both instances, the utility resolved/repaired the issues with the chlorine feed equipment within two days. After each repair, the utility flushed the water lines to eliminate the sulfur smell.

Last, staff reviewed customer complaints filed with the utility since January 1, 2010. Staff identified 16 complaints made with the utility concerning quality of service. The complaints addressed low pressure, water quality, and the water smelling like sulfur. There were two complaints in 2011, three in 2012, four in 2013, two in 2014, one in 2015, and four in 2016. Neighborhood responded to the complaints by testing water pressure, which was at normal levels, and flushing and repairing the chlorine feed equipment.

Based on staff's review, giving consideration to the utility's current compliance with DEP standards, improvement since it last rate case, as well as the low number of complaints over a period greater than 5 years, the quality of Neighborhood's product should be considered satisfactory.

Operating Condition of the Utility's Plant and Facilities

Neighborhood's water treatment system has one well rated at 350 gallons per minute (gpm). The raw water is treated with liquid chlorine for disinfection purposes. The utility's water system has three storage tanks totaling 62,000 gallons. The distribution system is a composite mix of PVC pipes of varying sizes. Staff's evaluation of Neighborhood's facilities included a review of the utility's compliance standards of operation, as well as a site visit.

Neighborhood's last two DEP Sanitary Survey Reports, dated September 29, 2011, and January 24, 2014, each identified multiple deficiencies. The most recent report identified the following deficiencies, three of which are repeat deficiencies:

- Well casings corroded (repeat);
- Aerator screens not cleaned;
- Tank inspections not performed by licensed engineer;
- Ground storage tank corroded (repeat); and
- No Operation & Maintenance manual (repeat).

Neighborhood corrected four of the five deficiencies by August 2014. The one deficiency that has not yet been corrected is the tank inspection. The utility noted that it had not corrected this

deficiency due to insufficient funds from declining revenues. Neighborhood requested that the tank inspection be included in the instant rate case as a pro forma project. In the utility's last rate case, the Commission stated that the utility's deferred maintenance to its water treatment plant and distribution system had caused sporadic substandard service to its customers.[4] The Commission further stated that the quality of the utility's product and the operating condition of the utility's water plant were marginal based on the utility's failure to perform routine maintenance of its facilities.[5]

In its May 27, 2016 letter, OPC stated that the utility is still deferring maintenance, which is impacting the utility's quality of service. In its letter, OPC expressed its belief that the uncured deficiency, the tank inspection identified by DEP, is an important deficiency. OPC additionally stated that the numerous pro forma plant (Issue 3) and expense (Issue 6) items requested appear to reflect neglected maintenance items. OPC's concerns regarding these items will be discussed in the respective issues below.

Staff agrees with OPC that the deferral of maintenance can ultimately affect the quality of a utility's service and can result in additional costs. However, the utility corrected the majority of deficiencies identified by DEP, and requested funds to cure the remaining deficiency. Once the utility performs its tank inspection, it should be in compliance with DEP requirements. Staff notes that DEP has neither issued a Consent Order against the utility nor assessed any fines for failing to correct the outstanding deficiency. For the reasons outlined above, staff recommends that no financial adjustments be made to the utility's return on equity (ROE) or officer's salaries to reflect the operating condition of Neighborhood's water treatment plant and facilities.

The Utility's Attempt to Address Customer Satisfaction

As part of staff's evaluation of customer satisfaction, staff held a customer meeting on May 18, 2016, to receive customer comments concerning Neighborhood's quality of service. Six customers attended the meeting with three customers speaking. The concerns raised during the customer meeting addressed customers not receiving boil water notices, estimated bills, customer service, water quality, and broken equipment.

In Neighborhood's previous rate case, several customers expressed concern regarding how the utility delivered boil water notices. As a result, the Commission Ordered the utility to provide the Commission with boil water notices for a year after the Order was issued.[6] During that time, the utility did not have any boil water notices. Staff found that the utility had a boil water notice in 2012, which was after the Commission-ordered reporting period.

The Commission's order also stated that hand delivered notices often fall off mail boxes onto the ground, that some customers may never become aware of the situation, and that follow-up notifications, rescinding the boil water notices, rarely occurred. One customer, at the customer meeting, in this case, had an issue with not being promptly informed of service interruptions. To this point, the utility responded that field personnel hand deliver boil water notices to customers' front door rather than their mailbox when service interruptions are being investigated and

[4] Order No. PSC-10-0024-PAA-WU.
[5] *Id.*
[6] *Id.*

repaired, which complies with DEP requirements. The utility also made changes to its website to address these customer concerns. Specifically, the utility now posts messages regarding boil water notices and rescission notices, as well as messages when a service interruption occurs and when it is fixed. Based on the utility's response, it appears the utility is actively taking steps to address concerns regarding boil water notifications. Staff also notes that only one customer, in contrast to six in the prior case, voiced concern on this issue.

In Neighborhood's prior rate case, the Commission also stated that customers shall have reasonable access to contact the utility during normal business hours, as well as an emergency, after-hours contact.[7] In its letter to the Commission, OPC recommended that the utility should be required to establish an emergency contact number for emergency situations. However, the utility provided staff with a copy of a customer bill, which contained the utility's office and emergency contact numbers where customers could easily locate the numbers. Staff believes this is a reasonable means of providing the utility's contact information.

One customer questioned if the utility's service personnel were qualified to perform the requisite utility services. Neighborhood contracts with an outside company, U.S. Water, whose employees are qualified and properly licensed to manage and operate the water systems and treatment facilities.

Another customer had concerns with broken meters. The utility acknowledged the broken meters, noted its plans to replace the meters, and confirmed that some usage for locations with broken meters was estimated. The same customer addressed issues with broken and leaking service connections. The utility believes that one reason for this issue is that customers drive over and/or park on the meters and boxes. Neighborhood has requested to replace the plastic meter boxes and lids in this customer's subdivision with fiberglass concrete boxes and lids. The request to replace meters is discussed more fully in Issue 6.

The same customer also stated that customers "get a run around" when calling the utility's office. Neighborhood explained that when a problem is reported to its office, the appropriate person investigates the issue and determines the solution. The utility calls the customer back with a report of its findings and repair plans. Neighborhood assures that emergency problems are handled immediately and confirmed the emergency telephone number, as well as the office telephone number, are shown on every bill.

Neighborhood provided customer contacts from January 1, 2010, through May 20, 2016. As shown in Table 1-1, there were 163 customer contacts; 121 were related to billing issues (high bills, payment arrangement, questioned meter readings, and receiving no bills); 16 were quality of service related complaints; and 26 were other issues (equipment repair, leaks, and property damage). The utility investigated and followed up with the customers in each instance, usually within one day.

Staff also requested complaints against the utility with the DEP for the period of January 1, 2010, through June 13, 2016. DEP responded with two complaints, one in 2015 and one in 2016. Both complaints were made by the same individual, and expressed concern regarding hydrogen sulfide

[7] *Id.*

odor due to low chlorine residual. These complaints were discussed in the Quality of Utility Product section above.

Finally, staff reviewed the Commission's complaint records from January 1, 2010, through June 1, 2016, and found seven complaints. All complaints concerned improper bills and were resolved. Staff additionally adds that no customer correspondence has been filed in the docket.

Table 1-1
Customer Contacts

Subject of Complaint	PSC's Records (CATS) (01/01/2010 - 06/01/2016)	Utility's Records (01/01/2010 - 05/20/2016)	DEP (01/01/2010 - 06/13/2016)	Customer Meeting*
Billing Related	7	121		2
Opposing Rate Increase				
Quality of Service		16	2	2
Other**		26		
Total	7	163	2	4

*Note: Customers spoke on multiple issues.
**Note: Other Includes: Equipment Repair, Leaks, Property Damage, Illegal Usage
Source: Responses to staff data requests

Based on the utility's responses to customer concerns expressed at the customer meeting, complaints filed with the Commission, and complaints filed with the DEP, staff believes the utility's attempt to address customer satisfaction should be considered satisfactory. Additionally, staff believes the utility addressed the concerns outlined in the Commission's prior order.

Conclusion

Based on the discussion and review above, staff recommends that the quality of the utility's product, the condition of utility's facilities, and the utility's attempt to address customer satisfaction be considered satisfactory. Therefore, staff recommends the overall quality of service be considered satisfactory.

Issue 2: What is the used and useful percentage (U&U) of Neighborhood Utilities, Inc.'s water treatment plant and distribution system?

Recommendation: Neighborhood's water treatment plant (WTP) and distribution system should be considered 100 percent U&U. Additionally, there appears to be no excessive unaccounted for water. Therefore, staff does recommend an adjustment be made to operating expenses for chemicals and purchased power. (P. Buys)

Staff Analysis: Neighborhood's water treatment system has one well rated at 350 gpm. The raw water is treated with liquid chlorine for disinfection purposes. The utility's water system has three storage tanks totaling 62,000 gallons. Neighborhood is also interconnected with JEA for emergency situations. There are 24 fire hydrants located throughout the utility's service area and its distribution system is a composite mix of PVC pipes of varying sizes. In the utility's last rate case, the Commission determined that both the WTP and distribution system were 100 percent U&U.[8]

Water Treatment Plant and Distribution System Used & Useful

As noted above, both Neighborhood's WTP and distribution system were deemed 100 percent U&U during its previous rate case.[9] Since the utility's last rate case, there has been no change in circumstances. Therefore, consistent with the Commission's prior decision, staff recommends that Neighborhood's WTP and distribution system should be considered 100 percent U&U.

Excessive Unaccounted for Water (EUW)

Pursuant to Rule 25-30.4325, F.A.C., the calculation of U&U for a water treatment plant must consider 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.[10] Unaccounted for water is all water that is produced that is not sold, metered, or accounted for in the records of the utility. 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 Rule additionally 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 Monthly Operating Reports that the utility files with the DEP indicate that the utility treated 28,132,000 gallons during the test year. The utility's annual reports indicate that it purchased 361,000 gallons of water and used 180,000 gallons for other uses during the test year. According

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[8] Order No. PSC-10-0024-PAA-WU
[9] Id.
[10] Order No. PSC-93-0455-NOR-WS, issued on March 24, 1993, in Docket No. 911082-WS, *In re: Proposed revisions to Rules 25-22.0406, 25-30.020, 25-30.025, 25-30.030, 25-30.032 through 25-30.037, 25-30.060, 25-30.110, 25-30.111, 25-30.135, 25-30.255, 25-30.320, 25-30.335, 25-30.360, 25-30.430, 25-30.436, 25-30.437, 25-30.443, 25-30.455, 25-30.515, 25-30.565; adoption of Rules 25-22.0407, 25-22.0408, 25-22.0371, 25-30.038, 25-30.039, 25-30.090, 25-30.117, 25-30.432 through 25-30.435, 25-30.4385, 25-30.4415, 25-30.456, 25-30.460, 25-30.465, 25-30.470, 25-30.475; and repeal of Rule 25-30.441, F.A.C., pertaining to water and wastewater regulation*, at p. 102

to the staff audit report, the utility sold 27,167,355 gallons of water for the test year. Based on the values above, unaccounted for water is only 4 percent. Therefore, staff recommends no adjustment be made to operating expenses for chemicals and purchase power due to EUW.

Conclusion

Consistent with its prior rate case, Neighborhood's WTP and distribution system should be considered 100 percent U&U. Additionally, since the utility's unaccounted for water is only 4 percent, no adjustment should be made to operating expenses for chemicals and purchased power.

Issue 3: What is the appropriate average test year water rate base for Neighborhood?

Recommendation: The appropriate average test year water rate base is $160,840. (L.Smith, P. Buys)

Staff Analysis: Neighborhood's water rate base was last established in its 2009 SARC by Order No. PSC-10-0024-PAA-WU.[11] The test year ended June 30, 2015, was used for the instant case. A summary of each rate base component and recommended adjustments are discussed below.

Utility Plant in Service (UPIS)

The utility recorded UPIS of $646,773. The staff audit identified several adjustments, resulting in a net increase to UPIS of $21,591, to reflect the appropriate balances, prior Commission-ordered adjustments, and additions that were not booked. These adjustments are shown on Table 3-1. Staff also made an averaging adjustment to decrease UPIS by $188.

Table 3-1
Audit Adjustments

Acct.	Description	Adjustments
302	Franchise	($243)
304	Structures & Improvements	7,447
307	Wells & Springs	7,695
309	Supply Mains	1,680
311	Pumping Equip.	674
320	Water Treatment Equip.	1,242
330	Distribution Reservoirs	2,522
331	T&D Mains	(2,570)
333	Services	3,880
334	Meters & Meter Installations	(1,036)
335	Tools, Shop, & Garage Equip.	300
	Total Adjustments	$21,591

Source: Audit

Pro Forma Plant

As shown in Table 3-2, staff made a net adjustment increasing UPIS by $3,640 for pro forma plant addition items. Staff believes these pro forma plant additions are prudent and reasonable based on the analysis of each item below. Therefore, staff recommends an average UPIS balance of $671,816 ($646,773 + $21,591 - $188 + $3,640).

Electric Panel Repairs, including Water Level Controls Replacement

The utility requested $14,250 to rewire and replace the electric panel. According to Neighborhood, the electric panel does not work consistently. A 2016 U.S. Water proposal

[11] Order No. PSC-10-0024-PAA-WU

reflects that the existing electrical panel should be replaced. This installation would require special disposal as the existing electric panel contains mercury. The retirement associated with this project is $5,209.

High Service Pump #1

The utility requested $3,977 to replace and upgrade a high service pump. Neighborhood stated the pump upgrade to 450 gallons per minute will increase fire flow capacity. U.S. Water provided a proposal to perform work associated with this project. The proposal stated the utility will supply the motor, seals, and gaskets. The retirement associated with this project is $2,271.

Pump House Roof

Neighborhood stated that the leaky roof could cause problems with the electric control panel. The proposal by Florida Residential to replace the pump house roof is $945.The retirement associated with this project is $347.

Check Valve

The utility requested $4,111 to replace a check valve at the water treatment plant. Neighborhood explained that the check valve will not shut after use which results in water flowing back through the pump. This action could cause damage to the pump and motor. The check valve has been temporarily isolated, and service has been switched to another pump. The utility received a 2016 proposal from U.S. Water to replace the valve. The retirement associated with this project is $3,083.

Flushing Valve

The utility requested $4,700 to install a two-inch flushing valve at the corner of Rothbury Drive South and Blair Road. A customer at this location complained about odors and installing a flushing valve could help resolve this complaint. Neighborhood reported that the nearest flushing source is a fire hydrant 450 feet away. U.S. Water provided a proposal to complete this work. There is no retirement associated with this project.

Meters and Meter Box Retirements

As discussed in Issue 6, staff is recommending a meter replacement program. Staff is also recommending replacing 50 meter boxes. The appropriate retirement associated with this project is $13,433.

Table 3-2
Pro Forma Plant Items

Project	Description	Amount
Electric Panel Repairs	Rewire and replace the electric panel	$14,250
	Associated Retirement	(5,209)
High Service Pump #1	Replace and upgrade a high service pump	3,977
	Associated Retirement	(2,271)
Pump House Roof	Replace the pump house roof	945
	Associated Retirement	(347)
Check Valve	Install new check valve	4,111
	Associated Retirement	(3,083)
Flushing Valve	Install a two-inch flushing valve	4,700
Meter and Meter Boxes	Reflect meter and meter box retirements	(13,433)
	Net Adjustment	$3,640

Source: Responses to staff data requests

Land & Land Rights

The utility recorded a test year land value of $1,000 consistent with the utility's last rate case. Staff did not make any adjustments to this account.

Accumulated Depreciation

Neighborhood recorded an Accumulated Depreciation balance of $462,169 on its 2014 Annual Report. The staff auditor calculated Accumulated Depreciation to be $459,458, as of June 30, 2015, resulting in a decrease of $2,711 and included Commission Ordered adjustments that the utility did not make. Staff also made an averaging adjustment to Accumulated Depreciation that resulted in a decrease of $10,320. Further, staff made adjustments based on pro forma plant additions and retirements resulting in a net decrease of $22,986. Staff's recommended adjustments result in an Accumulated Depreciation balance of $426,771 ($462,169 - $2,711 - $10,320 - $22,367).

Contributions In Aid of Construction (CIAC)

Neighborhood recorded a CIAC balance of $786,998 as of June 30, 2015. In analyzing this case, staff discovered that CIAC was not imputed correctly in the Utility's prior rate case. The Utility was unable to provide sufficient documentation to support this CIAC amount. As such, staff believes it is necessary to impute CIAC pursuant to Rule 25-30.570, F.A.C., which states:

> If the amount of CIAC has not been recorded on the utility's books and the utility does not submit competent substantial evidence as to the amount of CIAC, the amount of CIAC shall be imputed to be the amount of plant costs charged to the cost of land sales for tax purposes if available, or the proportion of the cost of the facilities and plant attributable to the water transmission and distribution system and the sewage collection system.

Pursuant to this Rule, staff included $243,607 which is the balance in Account 331 T&D Mains. Staff also recalculated the appropriate amount of meter installation fees and plant capacity charges based on the utility's tariff. This resulted in an increase to CIAC of $39,402 for the meter installation fees and $421,465 for plant capacity charges. Further, staff reduced CIAC by $13,433 to reflect meter retirements associated with pro forma meter replacements. Additionally, staff reduced CIAC by $421,465 to retire the plant capacity fees that were fully amortized. Therefore, staff recommends that the appropriate CIAC balance is $269,576 ($243,607 + $39,402 + $421,465 - $13,433 - $421,465). This results in a net decrease of $517,422 ($786,998 - $269,576).

Accumulated Amortization of CIAC

The utility recorded Accumulated Amortization of CIAC of $567,803 on its 2014 Annual Report. Staff recalculated this amount based on the imputed balances for CIAC. Based on staff's calculations, the appropriate components of Accumulated Amortization of CIAC are $145,438 for the T&D Mains, $33,357 for the Meter Installation Charges, and $421,465 for the Plant Capacity Fees. Staff also reduced Accumulated Amortization of CIAC by $13,118 associated with pro forma meter retirements and $421,465 to retire the fully amortized plant capacity fees. Therefore, staff recommends an Accumulated Amortization of CIAC balance of $165,362 ($145,438 + $33,357 + $421,465 - $13,433 - $421,465). This results in a net increase of $405,900 ($567,803 - $405,900).

Working Capital Allowance

Working capital is defined as the short-term investor-supplied funds that are necessary to meet operating expenses. Consistent with Rule 25-30.433(2), F.A.C., staff used the one-eighth of the operation and maintenance expense formula approach for calculating the working capital allowance. Applying this formula, staff recommends a working capital allowance of $18,390.

Rate Base Summary

Based on the foregoing, staff recommends that the appropriate average test year rate base is $160,840. Rate base is shown on Schedule No. 1-A. The related adjustments are shown on Schedule No. 1-B.

Issue 4: What is the appropriate return on equity and overall rate of return for Neighborhood?

Recommendation: The appropriate return on equity (ROE) is 11.16 percent with a range of 10.16 percent to 12.16 percent. The appropriate overall rate of return is 6.62 percent. (L. Smith)

Staff Analysis: Neighborhood's test year capital structure reflected negative common equity of $622,743, customer deposits of $7,995, and a long-term debt balance of $178,919. In accordance with Commission practice, staff set the negative common equity to zero.[12] Staff increased customer deposits by $1,338 to reflect the amount on the utility's deposit log and decreased customer deposits by $1,783 to reflect an averaging adjustment. This results in a net decrease of $445 in customer deposits. Thus, staff recommends a customer deposit balance of $7,550 ($7,995 - $445).

Staff reduced long-term debt by $89,769 to remove two amounts on the utility's books that Neighborhood stated were already paid. Staff also reduced long-term debt by $82,078 to remove two debts that were on the utility's books. Mr. O'Steen, the Utility President, informed the audit staff that these debts were unenforceable. Further, staff increased long-term debt by $95,068 to include two promissory notes that were not on the utility's books. Additionally, staff increased long-term debt by $1,307 to reflect an averaging adjustment. Thus, staff recommends a long-term debt balance of $103,447 ($178,919 - $89,769 - $82,078 + $95,068 + $1,307).

Neighborhood's capital structure has been reconciled with staff's recommended rate base. The appropriate ROE for the utility is 11.16 percent based upon the Commission-approved leverage formula currently in effect.[13] Staff recommends an ROE of 11.16 percent, with a range of 10.16 percent to 12.16 percent, and an overall rate of return of 6.62 percent. The ROE and overall rate of return are shown on Schedule No. 2.

[12] Order Nos. PSC-15-0535-PAA-WU, issued November 19, 2015, p. 6, in Docket No. 140217-WU, *In re: Application for staff-assisted rate case in Sumter County by Cedar Acres, Inc.;* and PSC-13-0140-PAA-WU, issued March 25, 2013, p. 6, in Docket No. 120183-WU, *In re: Application for staff-assisted rate case in Lake County by TLP Water, Inc.*

[13] Order No. PSC-16-0254-PAA-WS, issued June 29, 2016, in Docket No. 160006-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 5: What are the appropriate test year revenues for Neighborhood's water system?

Recommendation: The appropriate test year revenues for Neighborhood's water system are $141,920. (Johnson, Hudson)

Staff Analysis: Neighborhood recorded total test year revenues of $135,972. The water revenues included $134,866 of service revenues and $1,106 of miscellaneous revenues. Based on staff's review of the utility's billing determinants and the service rates that were in effect during the test year, staff determined test year service revenues should be $132,143. This results in a decrease of $2,723 ($134,866-$132,143) to service revenues for water.

On a contractual basis, U.S. Water provides disconnect and reconnection services to Neighborhood on a contractual basis. In order to recover its cost, the utility charged customers $20, which is more than its tariff and not in compliance with Commission Rules and Statutes.[14] As discussed in Issue 12, staff is recommending an increase to the utility's existing miscellaneous service charges, as well as adding a late payment charge. As a result, miscellaneous revenues should be increased to reflect the incremental increase of the miscellaneous service charges and the addition of a late payment charge. Based on staff's review of the number of miscellaneous service occurrences during the test year and the utility's recommended miscellaneous service charges, staff determined miscellaneous revenues should be $9,777 on a going forward basis. This results in an increase of $8,761 ($9,777-$1,106) to miscellaneous revenues for water. Based on the above, staff recommends that the appropriate test year revenues for Neighborhood's water system are $141,920 ($132,143+$9,777).

Although the utility charged more than its approved violation reconnection charge, staff does not believe the utility "willfully" disregarded Commission rules or statutes.[15]. As outlined above, the disconnection service is provided on a contractual basis and the utility was attempting to pass the cost to the cost causer. As discussed in Issue 12, staff is recommending violation reconnection charges of $30 and $32, for normal and after hours, respectively, which are more than the utility's tariff charges ($10 normal hours and $15 after hours), and an unauthorized charge of $20. The purpose of these miscellaneous service charges is to place the cost burden on the cost causers and not by the general body of ratepayers. The utility's existing violation reconnection charge results in subsidization from the general body of ratepayers because it does not cover the costs associated with service disconnections. Based on the above, staff believes no enforcement action is warranted at this time. However, Neighborhood should be put on notice that, in the future, it may be subject to a show cause proceeding by the Commission, including penalties, if the utility charges amounts other than those approved by the Commission.

[14] 367.081(1), F.S. (Utilities may only charge rates and charges approved by the Commission).
[15] *See*, Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, *In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc.* (willful implies an intent to do an act which is distinct from an intent to violate a statute or rule); and *Fugate v. Fla. Elections Comm'n*, 924 So. 2d 74, 76 (Fla. 1st DCA 2006) (willful conduct is an act or omission that is done "voluntarily and intentionally" with specific intent and "purpose to violate or disregard the requirements of the law").

Issue 6: What are the appropriate test year operating expenses for Neighborhood?

Recommendation: The appropriate amount of operating expenses for the utility is $176,221. (L. Smith, P. Buys, Johnson)

Staff Analysis: Neighborhood recorded operating expenses of $157,952. Staff reviewed Neighborhood's test year O&M expenses, including invoices, canceled checks, and other supporting documentation, and made several adjustments to the utility's operating expenses as summarized below.

Operation and Maintenance Expenses

Salaries and Wages - Employees (601)

Neighborhood recorded Salaries and Wages - Employees expense of $17,777. Staff increased this account by $223, to reflect the actual Salaries and Wages expense paid by the utility for one full-time employee. Therefore, staff recommends Salaries and Wages expenses of $18,000 ($17,777 + $223).

Purchased Power (615)

Neighborhood recorded Purchased Power expense of $5,261. Staff increased Purchased Power expense by $187 to reflect the actual amount incurred. The utility did not record any Purchased Power expense related to Neighborhood's office. Staff used a Commission-approved amount for a similarly sized utility and indexed that amount to 2015.[16] This results in an increase to Purchased Power expense of $1,705. Therefore, staff recommends Purchased Power expense of $7,153 ($5,261 + $187 + $1,705).

Chemicals (618)

The utility recorded Chemicals expense of $5,339. Staff decreased Chemicals expense by $635 to remove a transaction that was outside the test year. Therefore, staff recommends Chemicals expense of $4,704 ($5,339 - $635).

Contractual Services - Billing (630)

Neighborhood recorded Contractual Services - Billing expense of $4,912. Staff reduced Contractual Services - Billing expense by $1,123, to remove several bills that were outside the test year. Therefore, staff recommends Contractual Services - Billing expense of $3,789 ($4,912 - $1,123).

Contractual Services - Testing (635)

The utility recorded Contractual Services - Testing expense of $2,632. Staff reduced Contractual Services - Testing expense by $39 to remove unsupported expenses. Further, staff increased Contractual Services - Testing expense by $485 to reflect an annualized amount for DEP required tri-annual contaminants testing that Neighborhood did not perform during the test year. Therefore, staff recommends Contractual Services – Testing expense of $3,078 ($2,632 - $39 + $485).

[16] Order No. PSC-11-0436-PAA-WS, issued September 29, 2011, p. 8, in Docket No. 100472-WS, *In re: Application for staff-assisted rate case in Manatee County by Heather Hills Estates Utilities LLC.*

Contractual Services - Other (636)

Neighborhood recorded Contractual Services - Other expense of $19,774. Staff has increased Contractual Services - Other expense by $1,560 to reflect the cost of lawn maintenance. Consistent with Rule 25-30.433(8), F.A.C., staff reduced this account by $2,685 to remove and amortize various non-recurring repair expenses in this account. Further, staff increased Contractual Services - Other expense by $25,027 to reflect pro forma expenses as shown in Table 6-1. Therefore, staff recommends Contractual Services – Other expense of $43,676 ($19,774 + $1,560 - $2,685 + $25,027).

Pro Forma Expenses

Neighborhood has requested several pro forma expense items, which are summarized in Table 6-1. Staff believes these pro forma plant additions are prudent and reasonable based on the analysis of each item below. Pursuant to Rule 25-30.433(8), F.A.C., non-recurring expenses shall be amortized over a 5-year period unless a shorter or longer period of time can be justified.

Meter Reading

As part of the pro forma adjustments, staff increased this account by $6,092 to reflect the going-forward expense associated with meter reading services through U.S. Water. The utility submitted a quote from U.S. Water on June 1, 2016, that reflected meter reading services for up to 500 meters for an annual amount of $16,200, or $3.06 per meter per month. Since Neighborhood currently has 441 meters, and within a year should have installed 60 touch read meters, staff reduced this amount to reflect 381 meters. This reduction results in an annual amount of $12,344 (381 x $3.06 x 12), which represents an increase of $6,092 over the current contract. The utility is currently seeking to negotiate a lower contract amount with U.S. Water, as well as exploring alternatives.

Tank Inspection

Neighborhood is requesting $3,850 for a tank inspection. The estimated cost is based on a 2016 proposal from American Tank Maintenance, LLC. The proposal includes tank cleaning, inspections, and disinfection. The proposed inspection is a five-year inspection required by DEP and is currently overdue by 18 months. DEP did note this as a deficiency on the utility's last sanitary survey. The utility has indicated that the tank inspection has not been completed due to insufficient revenues. The adjustment to O&M Expenses would be $770 ($3,850 over five years). There is no retirement associated with this project.

Fire Hydrant Service

Neighborhood is requesting $5,400 for fire hydrant service. The 2016 proposal from Bob's Backflow and Plumbing Services states that the annual testing of the hydrants would include inspecting, operating, flushing, and greasing the ports of each hydrant. The proposal quoted $225 per hydrant. There are 24 hydrants in the distribution system. The adjustment to O&M Expenses would be $2,700 ($225 per fire hydrant over two years). There is no retirement associated with this project.

Valves

The utility is requesting $3,650 to clean and exercise valves. Neighborhood received a 2016 proposal from U.S. Water to locate, exercise, and cleanout all the valves. The adjustment to O&M Expenses would be $730 ($3,650 over five years). There is no retirement associated with this project.

Generator Switch Gear

The utility is requesting $2,181 to diagnosis and repair the generator switch gear. The utility reports that currently the switch gear works intermittently and needs troubleshooting and repair. The adjustment to O&M Expenses would be $435 ($2,181 over five years). There is no retirement associated with this project.

Line Break

On January 12, 2016, U.S. Water repaired a line break. The utility provided an invoice from U.S. Water, dated February 15, 2016. The cost for location, labor, and materials is $4,147. The adjustment to O&M Expenses would be $829 ($4,147 over five years). There is no retirement associated with this project.

Meter Replacements

Neighborhood is requesting $90,280 to replace approximately 441 meters. The estimated cost for the meter replacement project is based on a 2016 U.S. Water proposal. During the last rate case, the Commission approved pro forma expense to replace 40 meters per year at $5,255. Since then, Neighborhood has only replaced 57 meters. Neighborhood stated that water use and revenues have declined since the last rate case; therefore, there were not sufficient funds to pay for new meters. Neighborhood stated that all the meters would be replaced; even the 57 meters previously replaced due to the fact those meters are not touch read meters. Staff recommends that funds for the meter replacement program need to be collected in an escrow account at the rate of $12,360 ($206 per meter for 60 meters per year, as discussed in Issue 11). Staff believes the implementation of such an escrow program will provide extra protections to the customers and ensure the completion of the meter replacement program by the utility. The retirement associated with this project is $9,270.

Meter Boxes and Lids Replacement

The utility is requesting $5,550 to replace 50 meter boxes and lids at an estimated $111 per meter. Based upon a 2015 proposal submitted by Neighborhood, the cost breakdown is: meter boxes $47, lids $34, and installation $30. Neighborhood would like to replace the plastic boxes and lids with fiberglass concrete boxes and lids. This replacement would take place in the Cherokee Cove subdivision only. Accordingly, this cost should be amortized over five years which equates to $1,110.

Table 6-1
Pro-Forma Expenses Items

Project	Description	Amount
Meter Reading	To reflect going-forward meter reading expense	$6,092
Tank Inspection	To inspect storage tank per DEP requirements	770
Fire Hydrant Service	To annually test and service fire hydrants	2,700
Valves	To clean and exercise the valves	730
Generator Switch Repair	To replace switch in generator	435
Line Break Repair	To repair line break	829
Meter Replacement	To replace 60 meters per year	12,360
Meter Boxes	To replace 50 meter boxes	1,110
	Total	$25,027

Source: Responses to staff data requests

Rental of Building/Property (640)

Neighborhood did not record any Rental of Building/Property expense. The utility is currently using an office free of charge; however, the utility has since submitted a quote to lease 800 square foot office at $13.50 for square foot. Based on staff's analysis of available office rentals in the Jacksonville area, staff believes this amount is reasonable. Therefore, staff recommends Rental of Building expense of $10,800 (800 x $13.50).

Transportation Expense (650)

Neighborhood recorded Transportation expense of $6,746. The main vehicle used by Neighborhood is a 1998 Honda Accord. The title to this vehicle is in the name of the spouse of the Utility's President. There are no lease payments associated with this vehicle. The utility pays for all gas and maintenance on the vehicle. In addition to the Honda Accord, the utility occasionally uses a 2001 Lexus that is also the personal vehicle of the Utility President. There are no lease payments associated with this vehicle either, however the utility pays for the gasoline in exchange for the use of that vehicle. Staff increased Transportation expense by $632 to reflect supported expenses. Staff also reduced this account by $2,411 to remove a non-utility payment. Therefore, staff recommends Transportation expense of $4,967 ($6,746 + $632 - $2,411).

Insurance Expense (655)

The utility recorded Insurance expense of $4,164. Staff increased this expense by $1,344 to reflect actual expenses that are supported by documentation. Staff also reduced this account by $3,346 to remove payments for a life insurance policy on Neighborhood's President. According to the NARUC Uniform System of Accounts, these payments should be recorded below the line. Therefore, staff recommends Insurance expense of $4,967 ($4,164 + $1,344 - $3,346).

Regulatory Commission Expense (665)

The utility did not record any Regulatory Commission expense. By Rule 25-22.0407, F.A.C., Neighborhood is required to mail notices of the customer meeting and notices of final rates in this case to its customers. For these notices, staff has estimated $431 for postage, $308 for

printing, and $44 for envelopes. Additionally, the utility paid a $1,000 rate case filing fee. Based on the above, staff recommends that the total rate case expense is $1,783, which amortized over four years results in a Regulatory Commission expense of $446 ($1,783/4).

Bad Debt (670)

Neighborhood recorded Bad Debt expense of $387; however, audit staff did not include this amount due to the lack of documentary support. To establish an appropriate amount of Bad Debt expense for the test year, staff calculated a three-year average using annual reports filed for the years 2013, 2014, and 2015.[17] Using the three-year average, staff recommends a decrease of $71. Therefore, staff recommends Bad Debt expense of $316 ($387 - $71).

Miscellaneous Expense (675)

The utility recorded Miscellaneous expense of $32,085. Staff decreased Miscellaneous expense by $11,795 to remove expenses that were outside the test year. Staff also decreased Miscellaneous expense by $7,895 to remove expenses that had no supporting documentation. Staff increased Miscellaneous expense by $5,032 to include expenses that were not recorded on Neighborhood's books. Further, staff decreased this account by $128 to reclassify and capitalize expenses to UPIS. Further, staff reduced this account by $897 to reflect the going-forward cost of telephone service. Staff also reduced this account by $2,307 to remove non-utility expenses. Therefore, staff recommends Miscellaneous expense of $14,095 ($32,085 - $11,795 - $7,895 + $5,032 - $128 - $897 - $2,307).

Operation and Maintenance Expenses Summary

Based on the above, staff recommends that the O&M expense is $147,120. Staff's recommended adjustments to O&M expense are shown on Schedule Nos. 3-B and 3-C.

Depreciation Expense

The utility recorded Depreciation expense of $13,390 for the test year. Staff auditors recalculated Depreciation expense using the prescribed rates set forth in Rule 25-30.140, F.A.C., and determined that Depreciation expense was understated by $9,422. Staff also increased Depreciation expense by $849 associated with pro forma plant additions. Based on the above, staff recommends a test year Depreciation expense of $23,661 ($13,390 + $9,422 + $849).

CIAC Amortization Expense

Neighborhood did not record any CIAC Amortization expense for the test year. Staff calculated CIAC Amortization expense for the test year to be $9,118. Staff decreased this expense by $1,179 to reflect retirements related to pro forma meter installations. Based on staff's calculations, the utility's CIAC Amortization expense of $7,938 ($9,118 - $1,179).

Taxes Other Than Income (TOTI)

Neighborhood recorded TOTI of $11,550. Staff reduced this amount by $195 to reflect the appropriate test year property taxes. Staff increased TOTI by $2,023 to reflect RAFs associated with the revenue increase. It should be also noted that although it is not included in the revenue

[17] Order No. PSC-15-0335-PAA-WS, issued August 20, 2015, in Docket No. 140147-WS, *In re: Application for staff-assisted rate case in Sumter County by Jumper Creek Utility Company.*

requirement, the utility adds surcharges of ten percent and five percent to its customer's bills for a public service tax and a right of way tax for Duval County, respectively. The public service tax and right of way tax are self-reporting, which means it is the utility's responsibility to report and pay the county tax collector. Staff is therefore recommending TOTI of $13,378 ($11,550 - $195 + $2,023).

Income Tax

The utility did not record any income tax expense for the test year and shows a net loss for the last several years in its annual reports and income tax returns. This tax loss carry forward is in excess of the income tax provision on a going-forward basis, and is expected to continue to be so for at least the next 10 years. In this instance, it is Commission practice to allow no provision for income tax expense.[18] Therefore, staff recommends no income tax provision for the utility.

Operating Expenses Summary

The application of staff's recommended adjustments to Neighborhood's test year operating expenses result in operating expenses of $176,221. Operating expenses are shown on Schedule Nos. 3-A. The related adjustments are shown on Schedule No. 3-B.

[18] Order Nos. PSC-15-0535-PAA-WU, issued November 19, 2015, p. 11, in Docket No. 140217-WU, *In re: Application for staff-assisted rate case in Sumter County by Cedar Acres, Inc.*; and PSC-10-0124-PAA-WU, issued March 1, 2010, p. 9, in Docket No. 090244-WU, *In re: Application for staff-assisted rate case in Lake County by TLP Water, Inc.*

Issue 7: What is the appropriate revenue requirement?

Recommendation: The appropriate revenue requirement is $186,869, resulting in an annual increase of $44,949 (or 31.67 percent). (L. Smith)

Staff Analysis: Neighborhood should be allowed an annual increase of $44,949 (or 31.67 percent). This will allow the utility the opportunity to recover its expenses and earn a 6.62 percent return on its water system. The calculations are shown in Table 7-1.

Table 7-1
Revenue Requirement

Adjusted Rate Base	$160,840
Rate of Return	6.62%
Return on Rate Base	$10,648
Adjusted O&M Expense	147,120
Depreciation Expense (Net)	15,723
Taxes Other Than Income	13,378
Income Taxes	0
Revenue Requirement	$186,869
Less Adjusted Test Year Revenues	(141,920)
Annual Increase	$44,949
Percent Increase	31.67%

Issue 8: What are the appropriate rate structure and rates for Neighborhood's water system?

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. (Johnson, Hudson)

Staff Analysis: Neighborhood is located in Duval County within the SJRWMD and provides water service to approximately 437 residential and 4 general service customers. Approximately one 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 5,065 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) 0-6,000 gallons; (2) 6,001-12,000 gallons; and (3) all usage in excess of 12,000 gallons per month. The general service rate structure includes a BFC based on meter size and a 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.

Currently, the utility's BFC generates approximately 43 percent of the test year revenues. In order to design gallonage charges that will send the appropriate pricing signals to target non-discretionary usage, staff believes 30 percent of the revenue requirement should be recovered through the BFC. At the 30 percent BFC allocation, the percentage price increases as consumption increases, which is one of the rate design goals. In addition, the average number of people per household served by the water system is three; therefore, based on the number of persons per household, 50 gallons per day per person, and the number of days per month, the non-discretionary usage threshold should be 5,000 gallons per month instead of 6,000 gallons. Staff recommends shifting the third tier to 10,000 gallons and over, rather than 12,000 gallons and over, to provide a greater pricing signal for usage in excess of 10,000 gallons per month. Staff recommends a BFC and a three-tier gallonage charge rate structure, which includes a gallonage charge for non-discretionary usage for residential water customers. The rate tiers should be: (1) 0-5,000 gallons (non-discretionary); (2) 5,001-10,000 gallons; and (3) all usage in excess of 10,000 gallons per month. Staff recommends a BFC and uniform gallonage charge rate structure for general service water customers.

Further, based on the recommended revenue increase of approximately 31.7 percent, the residential consumption can be expected to decline by 1,537,000 gallons resulting in anticipated

average residential demand of 4,771 gallons per month. Staff recommends a 5.8 percent reduction in total test year residential gallons for rate setting purposes and corresponding reductions of $405 for purchased power, $266 for chemical expense, and $32 for RAFs to reflect the anticipated repression. These adjustments result in a post repression revenue requirement of $176,390. Table 8-1 contains staff's recommended rate structure and rates and alternative rate structure, which includes varying BFC allocations and rate blocks.

Table 8-1
Staff's Recommended and Alternative Water Rate Structures and Rates

	RATES AT TIME OF FILING	STAFF RECOMMENDED RATES (30% BFC)	ALTERNATIVE I (40% BFC)	ALTERNATIVE II (Across-the-board to existing rates) (43% BFC)
Residential				
5/8" x 3/4" Meter Size	$9.17	$8.46	$11.29	$12.29
Charge per 1,000 gallons				
0-6,000 gallons	$2.40			$3.22
6,001 – 12,000 gallons	$3.60			$4.82
Over 12,000 gallons	$4.80			$6.43
0 – 5,000 gallons		$4.35	$3.73	
5,001 – 10,000 gallons		$5.35	$4.36	
Over 10,000 gallons		$8.02	$6.54	
5,000 Gallons	$21.17	$30.21	$29.94	$28.39
12,000 Gallons	$45.17	$73.00	$64.82	$60.53
15,000 Gallons	$59.57	$97.06	$84.44	$79.82

Source: Current tariff and staff's calculations

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.

Issue 9: What is the appropriate amount by which rates should be reduced in 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 to remove rate case expense grossed-up for RAFs and amortized over a four-year period, as shown on Schedule No. 4-A. 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. Neighborhood 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. (Johnson, Hudson, L. Smith)

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 rates. The reduction will reflect the removal of revenue associated with the amortization of rate case expense, the associated return in working capital, and the gross-up for RAFs. This results in a reduction of $471.

Neighborhood's water rates should be reduced to remove rate case expense grossed-up for RAFs and amortized over a four-year period, as shown on Schedule No. 4-A. 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. Neighborhood 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.

Issue 10: Should the recommended rates be approved for the utility on a temporary basis, subject to refund with interest, 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 with interest, in the event of a protest filed by a party other than the utility. Neighborhood 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's Office of Commission Clerk no later than the 20th of each 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. (L. Smith)

Staff Analysis: This recommendation proposes an increase in water 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. Neighborhood 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 $29,966. 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, and,
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; and,
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 security, 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's Office of Commission Clerk no later than the 20th of each 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 11: What are the appropriate amount, terms, and conditions for the escrow account established for the meter replacement program?

Recommendation: The utility should be required to escrow $1,030 every month. The appropriate terms and conditions of the escrow account are set forth below in the Staff Analysis Section. (L. Smith, P. Buys)

Staff Analysis: As discussed in Issue 6, staff is recommending a meter replacement program for the utility. The meter replacement program includes replacing 60 meters per year, resulting in a total annual cost of $12,360. Staff believes that in order to assure that the meters are replaced and the customers are protected, Neighborhood should escrow $1,030 monthly, based on the utility's billing cycle, for a total of $12,360 annually ($1,030x12). Neighborhood should begin escrowing the funds no later than 60 days after implementing the rates approved by the Commission herein. Further, in order for approval of funds to be released, the utility must submit support documentation of installation of meters and associated costs. The meter replacement program is expected to be completed within eight years.

The security provided through an escrow agreement should include the following terms and conditions as part of the agreement:

(1) No monies in the escrow account may be withdrawn by the utility without the express approval of the Commission;

(2) The escrow account shall be an interest bearing account;

(3) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers;

(4) If a refund to the customers is not required, the interest earned by the escrow account shall revert to Neighborhood;

(5) All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times;

(6) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt;

(7) 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;

(8) The Commission Clerk must be a signatory to the escrow agreement; and

(9) The account must specify by whom and on whose behalf such monies were paid.

Neighborhood should maintain a record of the amount escrowed, and the amount of revenues that are subject to refund.

Issue 12: Should Neighborhood's miscellaneous service charges be revised?

Recommendation: Yes. Neighborhood's miscellaneous service charges should be revised. The charges should be effective on or after the stamped approval date on the tariff pursuant to Rule 25-30.475, F.A.C. In addition, the approved charges 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. (Johnson, Hudson)

Staff Analysis: Neighborhood's current initial connection, normal reconnection, premises visit, and violation reconnection charges were last established on September 28, 1984.[19] 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. The utility's request to revise its miscellaneous charges was accompanied by its reason for requesting the charge, as well as the cost justification required by Section 367.091(6), F.S.

Initial Connection Charge

Currently, the utility's initial connection charges are $10 and $15 for normal and after hours, respectively. The initial connection charge is levied for service initiation at a location where service did not exist previously. The utility representative makes one trip when performing the service of an initial connection. Based on labor and transportation to and from the service territory, staff recommends initial connection charges of $19 and $21 for normal and after hours, respectively. Staff's calculation is shown below.

Table 11-1
Initial Connection Charge Calculation

Activity	Normal Hours Cost		Activity	After Hours Cost
Labor (Administrative) ($8.65/hr x1/4 hr)	$2.16		Labor (Administrative) ($8.65/hr x1/4 hr)	$2.16
Labor (Field) ($12.69/hr x 1/3 hr)	$4.23		Labor (Field) ($19.03/hr x1/3hr)	$6.34
Transportation ($.54/mile x 24 miles-to/from)	$12.96		Transportation ($.54/mile x 24 miles-to/from)	$12.96
Total	$19.35		Total	$21.46

Source: Utility's cost justification documentation

Normal Reconnection Charge

The utility's normal reconnection charges are $10 and $15 for normal and after hours, respectively. The normal reconnection charge is levied for the transfer of service to a new customer account at a previously served location or reconnection of service subsequent to a customer requested disconnection. A normal reconnection requires two trips, which includes one to turn service on and the other to turn service off at a later date.

[19]Order No. 13723, issued September 28, 1984, in Docket No. 84003, *Application of Neighborhood Utilities, Inc., for a certificate to operate a water utility in Duval County.*

Based on labor and transportation to and from the service territory, staff recommends that the normal reconnection charges should be $34 and $38 for normal and after hours, respectively for water service. Staff's calculations are shown below.

Table 11-2
Normal Reconnection Charge Calculation

Activity	Normal Hours Cost		Activity	After Hours Cost
Labor (Administrative) ($8.65/hr x1/4 hr)	$2.16		Labor (Administrative) ($8.65/hr x1/4 hr)	$2.16
Labor (Field) ($12.69/hr x 1/4 hr x 2)	$6.35		Labor (Field) ($12.69/hr x 1/4 hr x 2)	$9.52
Transportation ($.54/mile x 24 miles-to/from x 2)	$25.92		Transportation ($.54/mile x 24 miles-to/from x 2	$25.92
Total	$34.43		Total	$37.60

Source: Utility's cost justification documentation

Violation Reconnection Charge

The utility's existing violation reconnection charges are $10 and $15 for normal and after hours, respectively. The violation reconnection charge is levied prior to reconnection of an existing customer after discontinuance of service for cause. The service performed for violation reconnection requires two trips, which includes one trip to turn off service and a subsequent trip to turn on service once the violation has been remedied. Neighborhood has contracted with U.S. Water for turn-offs when there is a violation. U.S. Water's first billed hour is for one to five turn-offs and an additional charge for fuel. The same billing methodology would apply for turn-ons, as well. The utility averages approximately 20 turn-offs per request made for turn-offs. However, the utility may not be able to avoid having only one turn-on at any given time. In order to minimize the cost of turn-ons, the utility has opted to perform this service when a violation has been remedied. Based on labor and transportation to and from the service territory, staff recommends water violation reconnection charges of $30 and $32 for normal and after hours, respectively. Staff's calculations for the water violation reconnection charges are shown below.

Table 11-3
Violation Reconnection Charge Calculation – Turn Off

Activity	Normal and After Hours Cost
Labor – (Administrative - utility) ($8.65/hr x1/4hr)	$2.16
Labor – (outside contractor)	$11.58
Transportation (outside contractor)	$.62
Total	$14.36

Source: Utility's cost justification documentation

Table 11-4
Violation Reconnection Charge Calculation – Turn On

Activity	Normal Hours Cost		Activity	After Hours Cost
Labor (Field) ($12.69/hr x 1/4 hr)	$3.17		Labor (Field) ($19.03/hr x 1/4 hr)	$4.76
Transportation ($.54/mile x 24 miles-to/from)	$12.96		Transportation ($.54/mile x 24 miles-to/from)	$12.96
Total	$16.13		Total	$17.72

Source: Utility's cost justification documentation

Premises Visit Charge

The utility's existing premises visit charge is $8 during regular business hours. The premises visit charge is levied when a service representative visits a premises at the customer's request for complaint resolution and the problem is found to be the customer's responsibility. In addition, the premises visit can be levied when a service representative visits a premises for the purpose of discontinuing service for nonpayment of a due and collectible bill and does not discontinue service because the customer pays the service representative or otherwise makes satisfactory arrangements to pay the bill. A premises visit requires one trip. Based on labor and transportation to and from the service territory, staff recommends premises visit charges of $19 and $21 for normal and after hours. Staff's calculations are shown below.

Table 11-5
Premises Visit Charge Calculation

Activity	Normal Hours Cost		Activity	After Hours Cost
Labor (Administrative) ($8.65/hr x1/4hr)	$2.16		Labor (Administrative) ($8.65/hr x1/4hr)	$2.16
Labor (Field) ($12.69/hr x 1/3 hr)	$4.23		Labor (Field) ($19.03/hr x 1/3 hr)	$6.34
Transportation ($.54/mile x 24 miles-to/from)	$12.96		Transportation ($.54/mile x 24 miles-to/from)	$12.96
Total	$19.35		Total	$21.46

Source: Utility's cost justification documentation

Table 11-6
Summary of Staff's Recommended Miscellaneous Service Charges

Miscellaneous Service Charges	During Hours	After Hours
Initial Connection Charge	$19	$21
Normal Reconnection Charge	$34	$38
Violation Reconnection Charge	$30	$32
Premises Visit Charge (in lieu of Disconnection)	$19	$21

Source: Staff's recommended charges

Summary

Neighborhood's miscellaneous service charges should be revised. The charges should be effective on or after the stamped approval date on the tariff pursuant to Rule 25-30.475, F.A.C. In addition, the approved charges 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 13: Should Neighborhood's request to implement a late payment charge be approved?

Recommendation: Yes. Neighborhood's request to implement a late payment charge should be approved. Neighborhood should be allowed to implement a late payment charge of $4.30. Neighborhood should be required to file a proposed customer notice to reflect the Commission-approved charge. The approved charge should be effective for services 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 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 ten days after the date of the notice. (Johnson)

Staff Analysis: Section 367.091(6), F.S., authorizes the Commission to establish, increase, or change a rate or charge other than monthly rates or service availability charges. The utility is requesting a $5.00 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(6), F.S.

The utility indicated that approximately 35 percent or 150 (35% x 430) of Neighborhood's bills are delinquent on a monthly basis. The utility indicated that it processes six late payment charges an hour. Neighborhood's cost justification included labor cost of $4.17, which was based on salary of $25 per hour. However, staff determined that the appropriate combine labor for the clerical and administrative employees is $21 per hour. Based on the labor and six late payment notices per hour, staff determined labor cost of $3.50 ($21/6). Neighborhood provided a cost justification for a late payment charge of $4.93. The cost basis for the utility's requested and staff's recommended late payment charge, including labor, is shown below. Staff's recommended charge has been rounded to the nearest tenth.

Table 12-1
Late Payment Charge Calculation

	Utility's Proposed	Staff Recommended
Labor	$4.17	$3.50
Printing	0.20	0.20
Postage	0.56	0.56
Total	$4.93	$4.26

Source: Utility cost justification and staff's calculation

Based on staff's research, since the late 1990s, the Commission has approved late payment charges ranging from $2.00 to $7.00.[20] The purpose of this charge is not only to provide an

[20] See Order Nos. PSC-14-0335-PAA-WS, in Docket No. 130243-WS, issued June 30, 2014, *In re: Application for staff-assisted rate case in Highlands County by Lake Placid Utilities Inc.*; 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.*; PSC-13-0177-PAA-WU, in Docket No. 130052-WU, issued April 29, 2013, *In re:*

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 Neighborhood's request to implement a late payment charge should be approved. Neighborhood should be allowed to implement a late payment charge of $4.30. Neighborhood should be required to file a proposed customer notice to reflect the Commission-approved charge. The approved charge should be effective for services 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 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 ten days after the date of the notice.

Application for grandfather certificate to operate water utility in Charlotte County by Little Gasparilla Water Utility, Inc.; 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, 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.*

Issue 14: Should Neighborhood be authorized to collect Non-Sufficient Funds Charges (NSF)?

Recommendation: Yes. Neighborhood should be authorized to collect NSF charges. Staff recommends that Neighborhood 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. (Johnson, Hudson)

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 Neighborhood 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.[21] 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, Neighborhood should be authorized to collect NSF charges for its water system. Staff recommends that Neighborhood 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.

[21]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 15: What are the appropriate initial customer deposits for Neighborhood's water service?

Recommendation: The appropriate water initial customer deposit should be $58 for the residential 5/8" x 3/4" meter size based on staff's recommended rates. 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 service. The approved initial customer deposits should be effective for connections made on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475, F.A.C. In addition, the utility should refund those deposits that have met the refund requirements of Rule 25-30.311(5), F.A.C., within 60 days of the issuance of a consummating order in this matter. The utility should file a refund report within in 30 days of the completion of the customer deposit refunds. Neighborhood should be on notice that it may be subject to a show cause proceeding by the Commission, including penalties, if customer deposits are not refunded pursuant to Commission rules. (Johnson, Hudson)

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. [22] Currently, the utility's initial customer deposits for residential and general service are $39 for 5/8" x 3/4", $54 for one inch, $78 for the one and one half inch, and $108 for two inch and over meter sizes. Based on the staff recommended water rates and post repression average residential demand, the appropriate initial customer deposit should be $58 for water to reflect an average residential customer bill for two months.

Pursuant to Rule 25-30.311(5), F.A.C., after a customer has established a satisfactory payment record and has had continuous service for a period of 23 months, the utility shall refund the residential customer's deposit. The utility applies interest and refunds deposits in January of each year if the rule requirement has been met in the prior year. The utility is currently holding 35 deposits of customers who have met the requirement of the Rule. However, based the utility's existing policy, the deposit will not be refunded until January of 2017.

Rule 25-30.311(4)(b), F.A.C., requires that deposit interest shall be simple interest in all cases and settlement shall be made annually. Staff does not believe it is appropriate to only refund customer deposits annually when the rule requirement has been met prior utility's to January of each year. Neighborhood should refund the customer deposits consistent with the rule requirement. The refund should be made within 60 days of a consummating order being issued in this matter. It should be noted that Neighborhood should be on notice that it may be subject to a show cause proceeding by the Commission, including penalties, if customers deposits are not refunded pursuant to Commission rules.

Staff recommends that the appropriate water initial customer deposit should be $58 for the residential 5/8" x 3/4" meter size based on staff's recommended rates. The initial customer

[22]Order Nos. 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 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.*

deposits for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill for water service. The approved initial customer deposits should be effective for connections made on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475, F.A.C. The utility should refund those deposits that have met the requirement pursuant to Rule 25-30.311(5), F.A.C., within 60 days of the issuance of a consummating order in this matter. The utility should file a refund report within in 30 days of the completion of the customer deposit refunds.

Issue 16: What are the appropriate meter installation charges?

Recommendation: The appropriate meter installation charges of $206 for the 5/8" x 3/4 meters and all other meter sizes should be at actual cost. The meter installation charge may only be collected from new connections to the utility's water system. The approved meter installation charges 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. (Hudson)

Staff Analysis: A meter installation charge is designed to recover the cost of the meter and the installation. Neighborhood's current meter installation charges were approved on September 28, 1984.[23] The meter installation charges are $90 for the 5/8" x 3/4" meter, $110.00 for the 1" meter, $202 for the 1 1/2" meter, $338 for the 2" meter, and actual cost for meter sizes over 2". As discussed in Issue 3, staff is recommending approval of a meter replacement program to replace existing meters with remote read meters. Based on the cost justification provided for the meter replacement program, staff believes it appropriate to update the utility's existing meter installation charges. Staff believes the requested meter installation charge is reasonable.

Based on the above, the appropriate meter installation charges of $206 for the 5/8" x 3/4 meters and all other meter sizes should be at actual cost. The meter installation charge may only be collected from new connections to the utility's water system. The approved meter installation charges 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.

[23] *Id.*

Issue 17: What is the appropriate manner in which the utility should handle estimated bills?

Recommendation: The utility should handle estimated bills in the manner prescribed in Rule 25-30.335, F.A.C. The utility should submit a sample bill displaying the appropriate designation for estimated bills within 30 days of the consummating order. In addition, Neighborhood should be put on notice that, in the future, it may be subject to a show cause proceeding by the Commission, including penalties. (Hudson)

Staff Analysis: As discussed previously, in the utility's last rate case, the Commission approved pro forma for the replacement of meters. However, according to the utility, due to declining revenues the utility was unable to maintain its meter replacement program. As a result, the utility estimates demand for those meters which are inoperable or unreadable. Staff received copies of a customer's bills, which a designation of "E" when the bill was estimated. Pursuant to Rule 25-30.335(2), F.A.C., if the utility estimates a bill, the bill statement shall prominently show the word "Estimated" on the face of the bill. In addition, the utility is obligated to timely correct any problems within the utility's control causing the need to estimate bills. Further, in no event shall a utility provide an estimated bill to any one customer more than four times in any 12-month period due to circumstances that are within the utility's control and service obligations.

Although the utility had a designation of "E" and not "Estimated" on the customer bill, staff does not believe the utility "willfully" disregarded Commission rules or statutes.[24] The utility estimates approximately 20 percent of its bills of which 5 percent is due to inoperable or unreadable meters. Until the inoperable or unreadable meters are replaced, the utility will continue to have estimated bills. When undertaking the meter replacement program, the utility should prioritize the replacement such that those meters that are inoperable or unreadable are replaced first in order to avoid noncompliance with the Rule. Staff believes the utility is proactive in its efforts to resolve the estimated bill issue because of its request for the meter replacements. Based on the above, staff believes no enforcement action is warranted at this time. However, Neighborhood should be put on notice that, in the future, it may be subject to a show cause proceeding by the Commission, including penalties, if the utility fails to comply with Rule 25-30.335, F.A.C.

Based on the above, the utility should handle estimated bills in the manner prescribed in Rule 25-30.335, F.A.C. The utility should submit a sample bill displaying the appropriate designation for estimated bills within 30 days of the consummating order. In addition, Neighborhood should be put on notice that, in the future, it may be subject to a show cause proceeding by the Commission, including penalties.

[24] *See*, Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, *In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc.* (willful implies an intent to do an act which is distinct from an intent to violate a statute or rule); and *Fugate v. Fla. Elections Comm'n*, 924 So. 2d 74, 76 (Fla. 1st DCA 2006) (willful conduct is an act or omission that is done "voluntarily and intentionally" with specific intent and "purpose to violate or disregard the requirements of the law").

Issue 18: Should the Utility be required to notify the Commission 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. Neighborhood 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. (L. Smith)

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. Neighborhood 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 19: Should this docket be closed?

Recommendation: No. Except for the granting of temporary rates in the event of protest, the four year rate reduction, and proof of adjustments of books and records, which are final actions, 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 customer deposits have been properly refunded. Once the above actions are completed this docket will be closed administratively. (Corbari)

Staff Analysis: Except for the granting of temporary rates in the event of protest, the four year rate reduction, and proof of adjustments of books and records, which are final actions 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 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 customer deposits have been properly refunded. Once the above actions are completed this docket will be closed administratively.

NEIGHBORHOOD UTILITIES, LLC TEST YEAR ENDED 06/30/15 SCHEDULE OF WATER RATE BASE			SCHEDULE NO. 1-A DOCKET NO. 150181-WU
DESCRIPTION	BALANCE PER UTILITY	STAFF ADJUSTMENTS TO UTIL. BAL.	BALANCE PER STAFF
UTILITY PLANT IN SERVICE	$646,773	$25,043	$671,816
LAND & LAND RIGHTS	1,000	0	1,000
ACCUMULATED DEPRECIATION	(462,169)	36,017	(426,152)
CIAC	(786,998)	517,422	(269,577)
ACCUMULATED AMORTIZATION OF CIAC	567,803	(402,441)	165,362
WORKING CAPITAL ALLOWANCE	0	18,390	18,390
WATER RATE BASE	($33,591)	$194,431	$160,840

NEIGHBORHOOD UTILITIES, LLC TEST YEAR ENDED 06/30/15 ADJUSTMENTS TO RATE BASE	SCHEDULE NO. 1-B DOCKET NO. 150181-WU
	WATER
UTILITY PLANT IN SERVICE	
1. To reflect prior COAs and additions that were not booked.	$21,591
2. To reflect an averaging adjustment.	(188)
3. To reflect pro forma plant additions.	3,640
Total	$25,043
ACCUMULATED DEPRECIATION	
1. To reflect the appropriate balance.	$2,711
2. To reflect an averaging adjustment.	10,320
3. To reflect pro forma plant additions.	22,986
Total	$36,017
CIAC	
1. To remove CIAC on the Utilities books.	$786,998
2. To reflect CIAC associated with T&D mains.	(243,607)
3. To reflect CIAC associated with Meter Installation Fees.	(39,402)
4. To reflect CIAC associated with Plant Capacity Fees.	(421,465)
5. To reflect retirement of Plant Capcity Fees.	421,465
6. To reflect retirements associated with Pro Forma Meters.	13,433
Total	$517,422
ACCUMULATED AMORTIZATION OF CIAC (AA of CIAC)	
1. To remove AA of CIAC on the Utilities books.	(567,803)
2. To reflect AA of CIAC associated with T&D mains.	145,438
3. To reflect AA of CIAC associated with Meter Installation Fees.	33357
4. To reflect AA of CIAC associated with Plant Capacity Fees.	421,465
5. To reflect retirement of Plant Capcity Fees.	(421,465)
6. To reflect retirements associated with Pro Forma Meters.	(13,433)
Total	($402,441)
WORKING CAPITAL ALLOWANCE	
To reflect 1/8 of test year O & M expenses.	$18,390

NEIGHBORHOOD UTILITIES, LLC
TEST YEAR ENDED 06/30/15
SCHEDULE OF CAPITAL STRUCTURE

SCHEDULE NO. 2
DOCKET NO. 150181-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	($622,743)	$622,743	$0					
2. RETAINED EARNINGS	0	0	0					
3. PAID IN CAPITAL	0	0	0					
4. OTHER COMMON EQUITY	0	0	0					
TOTAL COMMON EQUITY	($622,743)	$622,743	$0	$0	$0	0.00%	11.16%	0.00%
5. LONG TERM DEBT	$178,919	($75,472)	$103,447	$46,383	$149,830	95.20%	6.85%	6.52%
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 LONG TERM DEBT	$178,919	($75,472)	$103,447	$46,383	$149,830	95.20%		
8. CUSTOMER DEPOSITS	$7,995	($445)	$7,550	$0	$7,550	4.80%	2.00%	0.10%
9. TOTAL	($435,829)	$546,826	$110,997	$46,383	$157,380	100.00%		6.62%

RANGE OF REASONABLENESS	LOW	HIGH
RETURN ON EQUITY	10.16%	12.16%
OVERALL RATE OF RETURN	6.62%	6.62%

NEIGHBORHOOD UTILITIES, LLC TEST YEAR ENDED 06/30/15 SCHEDULE OF WATER OPERATING INCOME				SCHEDULE NO. 3-A DOCKET NO. 150181-WU	
	TEST YEAR PER UTILITY	STAFF ADJUSTMENTS	STAFF ADJUSTED TEST YEAR	ADJUST. FOR INCREASE	REVENUE REQUIREMENT
1. **OPERATING REVENUES**	$135,972	$5,948	$141,920	$44,949 31.67%	$186,869
OPERATING EXPENSES:					
2. OPERATION & MAINTENANCE	$133,012	$14,108	$147,120	$0	$147,120
3. DEPRECIATION	13,390	10,271	23,661	0	23,661
4. AMORTIZATION	0	(7,938)	(7,938)	0	(7,938)
5. TAXES OTHER THAN INCOME	11,550	(195)	11,355	2,023	13,378
6. INCOME TAXES	0	0	0	0	0
7. **TOTAL OPERATING EXPENSES**	$157,952	$16,246	$174,198	$2,023	$176,221
8. **OPERATING INCOME/(LOSS)**	($21,980)		($32,278)		$10,648
9. **WATER RATE BASE**	($33,591)		$160,840		$160,840
10. **RATE OF RETURN**	65.43%		-20.07%		6.62%

NEIGHBORHOOD UTILITIES, LLC	Schedule No. 3-B
TEST YEAR ENDED 06/30/15	DOCKET NO. 150181-WU
ADJUSTMENTS TO OPERATING INCOME	Page 1 of 2
	WATER
OPERATING REVENUES	
1. To reflect the appropriate test year services revenues.	($2,723)
2. To reflect the appropriate test year miscellaneous service revenues.	8,671
Subtotal	$5,948
OPERATION AND MAINTENANCE EXPENSES	
1. Salaries and Wages - Employees (601)	
To reflect appropriate employee salaries.	$223
2. Purchased Power (615)	
a. To reflect actual purchased power expense.	$187
b. To include estimate of electric for office.	1,705
Subtotal	$1,892
3. Chemicals (618)	
To remove invoice that occurred outside the test year.	($635)
4. Contractual Services - Billing (630)	
To remove invoices outside the test year.	($1,123)
5. Contractual Services - Testing (635)	
a. To remove unsupported invoices.	($39)
b. To reflect the appropriate testing expense.	485
Subtotal	$446
6. Contractual Services - Other (636)	
a. To reflect lawn maintenance.	$1,560
b. To remove and amortize non-recurring expenses.	(2,685)
c. To reflect pro forma expenses.	25,027
Subtotal	$23,902
7. Rents (640)	
To include rent expense.	$10,800

NEIGHBORHOOD UTILITIES, LLC TEST YEAR ENDED 06/30/15 ADJUSTMENTS TO OPERATING INCOME	Schedule No. 3-B DOCKET NO. 150181-WU Page 2 of 2
8. Transportation Expense (650)	
a. To reflect supported amount.	$632
b. To remove loan payment.	(2,411)
Subtotal	($1,779)
9. Insurance Expenses (655)	
a. To reflect supported amounts.	$1,344
b. To remove Life Insurance Expense.	(3,346)
Subtotal	($2,002)
10. Regulatory Commission Expense	
Allowance for rate case expense amortized over 4 years.	$446
11. Bad Debt Expense (670)	
a. To remove undocumented expense. (AF 11)	($387)
b. To reflect three year average bad debt expense.	316
Subtotal	($71)
12. Miscellaneous Expense (675)	
a. To removed expenses outside the test year. (AF11)	($11,795)
b. To remove expenses due to lack of support. (AF11)	(7,895)
c. To include supported expenses not on utility's books. (AF11)	5,032
d. To reclassify and capitlize to UPIS.	(128)
e. To reflect going-forward cost of phone service.	(897)
f. To remove non-utility expense.	(2,307)
Subtotal	($17,990)
TOTAL OPERATION & MAINTENANCE ADJUSTMENTS	$14,109
DEPRECIATION EXPENSE	
1. To reflect the appropriate test year depreciation expense. (AF3)	$9,422
2. To reflect pro forma additions.	849
Total	$10,271
AMORTIZATION	
To reflect the appropriate test year amortization expense.	($7,938)
TAXES OTHER THAN INCOME	
To reflect the appropriate test year TOTI.	($195)

NEIGHBORHOOD UTILITIES, LLC TEST YEAR ENDED 06/30/15 ANALYSIS OF WATER OPERATION AND MAINTENANCE EXPENSE		SCHEDULE NO. 3-C DOCKET NO. 150181-WU	
	TOTAL PER UTILITY	STAFF ADJUST-MENT	TOTAL PER STAFF
(601) SALARIES AND WAGES - EMPLOYEES	$17,777	$223	$18,000
(603) SALARIES AND WAGES - OFFICERS	26,400	0	26,400
(610) PURCHASED WATER	0	0	0
(615) PURCHASED POWER	5,261	1,892	7,153
(618) CHEMICALS	5,339	(635)	4,704
(620) MATERIALS AND SUPPLIES	1,300	0	1,300
(630) CONTRACTUAL SERVICES - BILLING	4,912	(1,123)	3,789
(631) CONTRACTUAL SERVICES - PROFESSIONAL	3,475	0	3,475
(635) CONTRACTUAL SERVICES - TESTING	2,632	446	3,078
(636) CONTRACTUAL SERVICES - OTHER	19,774	23,902	43,676
(640) RENTS	0	10,800	10,800
(650) TRANSPORTATION EXPENSE	6,746	(1,779)	4,967
(655) INSURANCE EXPENSE	4,164	(2,002)	2,162
(656) GENERATOR LEASE	2,760	0	2,760
(665) REGULATORY COMMISSION EXPENSE	0	446	446
(670) BAD DEBT EXPENSE	387	(71)	316
(675) MISCELLANEOUS EXPENSE	32,085	(17,990)	14,095
	$133,012	$14,108	$147,120

NEIGHBORHOOD UTILITIES, INC. TEST YEAR ENDED 06/30/15 MONTHLY WATER RATES			SCHEDULE NO. 4 DOCKET NO. 150181-WU
	UTILITY CURRENT RATES	STAFF RECOMMENDED RATES	4 YEAR RATE REDUCTION
Residential and General Service			
Base Facility Charge by Meter Size			
5/8"X3/4"	$9.17	$8.46	$0.02
3/4"	$13.76	$12.69	$0.03
1"	$22.94	$21.15	$0.06
1-1/2"	$45.86	$42.30	$0.11
2"	$73.39	$67.68	$0.18
3"	$146.77	$135.36	$0.37
4"	$229.33	$211.50	$0.57
6"	$458.67	$423.00	$1.14
Charge per 1,000 gallons - Residential			
0 - 6,000 gallons	$2.40	N/A	N/A
6,001 - 12,000 gallons	$3.60	N/A	N/A
Over 12,000 gallons	$4.80	N/A	N/A
0 - 5,000 gallons	N/A	$4.35	$0.01
5,001 - 10,000 gallons	N/A	$5.35	$0.01
Over 10,000 gallons	N/A	$8.02	$0.02
Charge per 1,000 gallons - General Service	$2.45	$4.82	$0.01
Typical Residential 5/8" x 3/4" Meter Bill Comparison			
5,000 Gallons	$21.17	$30.21	
10,000 Gallons	$37.97	$56.96	
15,000 Gallons	$59.57	$97.06	